

The Netherlands Institute for Human Rights Submission

**to the pre-session working group of the Committee on the
Rights of the Child**

concerning the 4th Periodic Report of the Netherlands

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I. Introduction

The Committee on the Rights of the Child has scheduled the consideration of the fourth periodic report of the Netherlands for its 69th session (25 May - 12 June 2015). The Netherlands Institute for Human Rights (hereafter: the Institute) was invited to provide information that it considers relevant to the situation of the rights of the child in the Netherlands. The Institute appreciates this opportunity to bring a number of issues to the attention of the Committee that it may wish to include in its List of Issues to be drawn up during the pre-session working group held from 16-22 September 2014.

The Institute is the National Human Rights Institution for the Netherlands. It was accredited A-status in May 2014. Its tasks include the cooperation with human rights treaty bodies. In the performance of this task, the Institute has consulted other bodies in the Netherlands, including the Children's Ombudsman, UNICEF Netherlands and civil society organisations active in the field of the rights of the child. The Children's Ombudsman has submitted his own report, and the Committee also has a joint report submitted by a coalition of Dutch NGOs at its disposal.

The present contribution is based on the Institute's activities relating to the human rights of children in the Netherlands, and therefore does not cover all provisions of the Convention. Where applicable, the Institute's report refers to the relevant paragraphs of the Government's report.

II. General

1. National Action Plan on Human Rights

On 10 December 2013, the Government of the Netherlands published its first National Action Plan on Human Rights. The Action Plan pays attention to children's rights, including the implementation of the Convention on the Rights of the Child. As it noted in its Status Report 2013, the Institute considers the publication of this Action Plan a positive step towards the further enjoyment of human rights in the Netherlands. However, the Action Plan needs to be complemented by a set of comprehensive and concrete measures to become an instrument in the further realisation of human rights in the Netherlands. The Institute has also suggested that the Government develop a concrete policy towards the implementation of the Action Plan, in which the follow-up of recommendations by human rights treaty bodies is accorded a clear place. The Institute holds the view that the Government should facilitate the participation of advisory bodies and civil society organisations in the development and implementation of such a policy.

The Committee could ask the Government to indicate which specific measures it will take to implement the National Action Plan on Human Rights, and how it envisages to ensure that due attention is paid to the obligations under the Convention on the Rights of the Child. In addition, the Government could be asked to provide information as to how it will involve advisory bodies and civil society organisations in developing and implementing policy measures.

2. Ratification of the third Optional Protocol to the Convention

As regards the Convention on the Rights of the Child, the Government indicates in the Action Plan that it will determine its position on the ratification of the Optional Protocol to the Convention after submission of the bills on the ratification of a number of other human rights instruments.

The Institute suggests that the Committee invites the Government to indicate the time frame for ratification of the Optional Protocol to the Convention on the Rights of the Child and to motivate why ratification has been postponed.

3. Applicability of the Convention in the Caribbean part of the Netherlands

As from 10 October 2010, three islands in the Caribbean part of the Netherlands have become an integral part of the Netherlands. These islands, Bonaire, St. Eustatius and Saba, have been designated as public bodies.

In 2013, UNICEF Netherlands issued reports on the application of the Convention in the Caribbean part of the Netherlands. It concludes that the children on these islands grow up in conditions that do not meet the requirements stipulated by the Convention. According to UNICEF this applies to all children's life situations: family and childrearing, education, health care, safety, recreation, play and leisure time, participation, domestic life and household finance. An integral approach by the local governments and the national government is highly needed.

In the framework of these reports the Netherlands Institute for Human Rights advised UNICEF Netherlands on the issue of equal treatment in the application of the Convention in the Caribbean part of the Netherlands. The Institute recalled that the essential level of the rights of the Convention must be guaranteed as quickly as possible. Different policies and regulations in each of the regions to implement the Convention are not *per se* incompatible with the obligations of the Netherlands under national and international law. Indeed, under certain circumstances differences in regulations or policy may even be required, for example, when this is appropriate to address the situation of disadvantaged children on the islands. It is, however, required that differences in treatment of children in the various parts of the Netherlands are justified in an objective manner. During a visit to the three islands, the Institute was informed by civil society organisations and local officials that it is not always clear why different rules are applied. Questions as to the justification and adequate motivation of the application of different rules have been raised. For example, why do regulations for child allowance, social work and juvenile justice diverge between the Caribbean and European part of the Netherlands and is the effect of this in accordance with the Convention? The local spokespersons underlined the necessity of sufficient awareness of the impact that political decisions in The Hague have on the Caribbean ground.

In 2014 the Government has commissioned an independent evaluation of the present political structure, to be ready 10 October 2015 at the latest. The Institute holds the view that this evaluation should also address the application of the principle of equal treatment with respect to the implementation of the Convention.

The Institute suggests that the Committee seeks further information from the Government on the application of the Convention on the Rights of the Child in the

Caribbean part of the Netherlands, given the precarious state of children's rights in that region.

III. Right to a nationality (Section IV.A of the Government report)

Under Dutch law, stateless children born in the Netherlands can acquire Dutch nationality by option after a stay of three years in the Netherlands. The law stipulates that a residence permit is a condition for this option. In 2010, a Dutch court ruled that this right to opt for Dutch nationality applies also when the child does not reside legally in the Netherlands. The court relied on the Convention. Advisory bodies including the Netherlands Institute for Human Rights and the Advisory Committee on Migration Affairs advised the Government to abolish the requirement to have a residence permit in the case of stateless children. The Government has rejected this recommendation. As a consequence, stateless children born in the Netherlands who do not have a residence permit cannot opt for Dutch nationality.

The Institute suggests that the Committee invites the Government to motivate why it upholds the requirement to have had a residence permit for three years for stateless children born in the Netherlands. The Committee could ask the Government how these children can enjoy their right to acquire a nationality as guaranteed in article 7 of the Convention.

IV. Social security and youth care (par. 300 *et seq.* of the Government report)

1. New tasks for municipalities

The system of youth welfare services is undergoing fundamental changes in the process of decentralisation that has been initiated by the Government. At present, the central Government, provinces and municipalities are responsible for youth welfare services. Following the entry into force of the new Youth Act on 1 January 2015, municipalities will become entirely responsible for all youth welfare services. These include voluntary and compulsory youth welfare services, child protection, youth rehabilitation, curative mental care and care for youth with a mental disability. Many of the additional tasks for municipalities under the new Youth Act concern the protection of human rights of children.

Although the National Action Plan on Human Rights raises the concern that municipalities have limited knowledge of human rights, the Government does not take measures for improvement. The Institute recalls that the decentralisation of youth welfare services to municipalities does not diminish the responsibility of the central Government to guarantee human rights. The State will have to inform international human rights monitoring bodies about the protection of human rights at the local level. The recently published strategy to gather information on developments and practice by municipalities could contribute to meeting the need to monitor the protection of the rights of children by municipalities. The Government stated that one of the starting points is to monitor the effects of the decentralisation of these tasks on vulnerable groups. Every half year in-depth research will be carried out in a number of municipalities to measure to what extent the youth welfare

services meet children's needs. The municipal monitor will include early warning items such as data on child abuse, children in poverty and overweight children.

The Institute advises the Committee to ask the Dutch government:

How it intends to guarantee that municipalities have the necessary expertise to protect human rights of children.

Whether the procedure for monitoring provides sufficient insight in the protection of human rights of children by municipalities.

2. Privacy aspects

The decentralisation of youth welfare services is part of a larger transition of Government tasks to municipalities. Consequently, municipalities will process more personal data of individuals about issues such as health, youth welfare services, income and debt and data relating to criminal convictions. Data will not only be exchanged between municipal institutions but also between municipalities and external parties, such as health insurances companies. Not only data of the person receiving services from the authorities will be exchanged, but also data of persons in his environment, such as other members of the household.

This increased exchange of personal data by municipalities leads to serious risks for the protection of the private life. The Dutch Data Protection Authority (DPA) pointed out that many municipalities do not yet provide the guarantees that are necessary to ensure that only persons with proper authorization will have access to personal data. Further, there is a risk of excessive exchange of sensitive data. The possibility that data, once collected, are used for other purposes constitutes another risk. Also, concerns exist with regard to remedies in case of unlawful or arbitrary interference with private life. The DPA has repeatedly expressed its concern about the absence of transparency in data collection: it is insufficiently clear who is collecting which data for which purpose. This raises serious issues on the necessity and proportionality of the interference with the private life and family life of children and members of their family.

The Institute advises the Committee to ask the Dutch government:

How it intends to safeguard the privacy of children and members of their family in the processing of personal data.

V. Health (par. 252 et seq. Government report)

1. Medical research involving minors (par. 66 Government report)

The Institute is concerned about a proposed amendment to the Medical Research (Human Subjects) Act (WMO). The Government states that it complies with a recommendation by a committee chaired by professor Doek. The Act will be amended such that its provisions on research are in line with European legislation on clinical trials on medicinal products for human rights (par. 66 report). Under current law, medical research involving minors which does not have the potential to benefit them, may be carried out only if the risks are negligible and the objections are minimal. The proposed amendment aims to lower this

threshold and to permit non-therapeutic research in cases where the objections or risks for the minor involved constitute a minor increase over minimal risk. Other conditions for medical research continue to exist.

In an advice on the proposed amendment, the Institute has expressed a number of concerns. First, the proposed amendment raises serious issues under the Convention on the Rights of the Child. In its advice, the Institute refers to the Committee's general comment on article 24 CRC. The Committee addresses the right to health in relation to other provisions of the Convention, including the right to be heard and the principle of the best interest of the child. Where research is aimed at advancing medical science, the best interest of the individual child prevails. Dutch health law provides particular protection to children under twelve years. The proposed amendment will diminish this level of protection, which is, according to the Institute, incompatible with the requirements of the Convention. Considering participation in research that does not benefit the child itself is difficult and demanding, especially for young children. The Institute therefore considers that for these children the current higher threshold should be upheld: such research should only be permitted if the risks are negligible and the objections are minimal. For children over twelve years the threshold could be different. However, the Act should provide the necessary guarantees to ensure that these children participate in research only with free and full consent.

Second, the condition 'minor increase over minimal risk' is too vague to comply with the requirement that restrictions on rights must be provided by law. This requirement applies to, among others, the right to respect for privacy. It is not compatible with this requirement that the interpretation of these terms is largely left to the institutional review boards. More precise definitions should be provided by the legislator, in order to ensure adequate protection of children.

In June 2014, the minister of Health, Welfare and Sport submitted a letter to parliament on the compatibility of the proposed amendment in relation to the European regulation on clinical trials on medicinal products for human use.¹ The proposed amendment of the Medical Research (Human Subjects) Act (WMO) will be revised in light of this regulation, which she interprets as providing more room for children to participate in non-therapeutic medical research. The Institute is concerned that this will further lower the threshold for children's participation in such trials.

Third, on various occasions, the Human Rights Committee has expressed its concern on the Dutch Act in connection with article 7 ICCPR. According to the HRC, 'the law does not contain adequate safeguards in relation to medical experimentation requiring the involvement of children' and recommended that the Netherlands 'should ensure that minors are not subjected to any medical experiments which do not directly benefit the individual concerned (non-therapeutic research) and that safeguards in general are fully consistent with the rights of the child, including with regard to matters of consent.'² The Institute considers that the statement that children are adequately protected is insufficiently motivated in the explanatory memorandum to the proposed act.

¹ Regulation (EU) No. 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, article 32.

² CCPR/C/NLD/CO/4, Concluding observations of the Human Rights Committee: The Netherlands (2009), par. 8.

The Institute would welcome questions of the Committee on the Rights of the Child on this issue to seek further clarification from the Government on this issue. The proposed amendment raises questions concerning compatibility with the right to physical and psychological integrity and children's right to health, especially where it concerns young children.

2. Medical care for minor aliens (section VIII of the Government report)

In 2012 a six year old girl from Georgia residing with her family in a centre for asylum seekers was expelled to Poland. Prior to expulsion her parents had called for medical care for their daughter. Despite their concern about her health status the family was expelled. Shortly after arrival in Poland doctors diagnosed the girl with a serious illness. The Health Inspectorate and the Inspectorate of the ministry of Security and Justice investigated medical care for aliens in various settings. They concluded that there were shortcomings in communication and transferring of medical files between various institutions that are involved in providing accommodation and medical services to aliens. It was found that files were not transferred or were incomplete when transferred.

The Institute suggests that the Committee seeks information from the Government on the steps it has taken to monitor the quality and accessibility of health care to minor aliens.

3. Non-discrimination: children with intersex condition

Not much is known about the situation of children with intersex condition in the Netherlands. Little is known about the long-term effects of medical intervention - which may include irreversible surgery - at an early age. In its 2013 Status Report, the Netherlands Institute for Human Rights stressed the need for further awareness of the obstacles, including discrimination, that persons with intersex condition encounter in daily life.

The Institute suggests that the Committee asks the Government how it will guarantee that future research on children with intersex condition takes due account of the human rights of children as laid down in the Convention. In particular, the Committee could seek further information on the Government's intention to examine the long-term effects of medical treatment of children with intersex condition.

Also, the Committee may wish to inquire whether the Government intends to raise awareness on the rights of children with intersex condition, including on the right to non-discrimination.

VI. Adequate standard of living (par. 325-326 Government report)

Poverty in the Netherlands increased in the past years mainly among a number of groups, including single-parent families, especially those with minor children. A relatively high number of households of people of non-Western origin face poverty, often long-term poverty. About a third of all the poor are children. The Children's Ombudsman's report 'Children in poverty' (2012) showed that children growing up in poverty suffer from

physical and mental problems because they worry about their situation. Children in poverty can often only partly participate in social activities, including activities that contribute to their health, like sports. While several municipalities have developed good policies to address the situation of children growing up in poverty, this is not the case for all municipalities. In order to improve this, the Children's Ombudsman has developed a practical tool for municipalities to develop and implement a policy to address poverty taking into account the rights of children.

The Institute invites the Committee to ask the Government to provide an update on the measures it has taken to combat poverty of children and members of their families, and the role the Convention plays in developing and implementing such measures.

VII. Education (par. 327 *et seq.* Government report)

1. Students with disabilities

Research commissioned by the Ministry of Education, Culture and Science shows that in 2012 in higher education three out of 10 students have a disability. One third of these students experience problems with studying because of their disability. In many cases schools provide support and accommodation for students with disabilities, but the research shows that many students do not make use of these possibilities. The research also shows that students with disabilities have lower grades, are more behind with their study and drop out twice as often as students without a disability.

The Institute suggests that the Committee asks the Government to examine the causes for the limited use of the facilities and which initiatives it has taken to improve this situation.

2. Secondary vocational education

Students with disabilities in secondary vocational education have difficulties being accepted by schools and being accepted by employers to do their internships, that are generally a mandatory part of their curriculum. This can be deduced from complaints that students with autism filed with the autism hotline (in the summer of 2013 the hotline received more than 100 complaints) and from opinions of the Netherlands Institute for Human Rights. According to the Institute these experiences are mostly the result of prejudices and employers and schools not knowing enough about their legal obligations. It is therefore necessary to educate school officials in secondary vocational education about the rights and obligations concerning equal treatment of students with disabilities. It is also important that research is done to find out if above mentioned problems are also encountered by students in other kinds of education.

The Institute advises the Committee to seek further information from the Government to address the obstacles encountered by students with disabilities in being accepted by schools and employers.

3. Awareness raising in schools on sexual diversity

As from 2012 sexuality and sexual diversity is a mandatory element of the curriculum of primary and secondary schools. Nevertheless, research shows that 59% of students in secondary education did not receive information on sexual diversity. 75% of young LGBT suffer from harassment on the ground of their sexual identity. Only 5% of students in secondary education feel comfortable to reveal their sexual identity to everyone in school. In March 2014, at the request of Parliament, the minister of Education, Culture and Science asked the Inspectorate of Education to investigate whether schools comply with their obligations. The investigation will cover various types of education. Results are expected in 2016. The Netherlands Institute for Human Rights has recommended that schools strengthen their human rights education and use this as a framework to discuss inclusion, non-discrimination and the position of LGBT children. This requires that human rights education is explicitly taught in teacher education.

The Institute suggests that the Committee seeks further information from the Government on the measures it will take to increase the expertise of teachers in the field of human rights, with particular attention for the rights of LGBT children.

VIII. Human rights education (par. 358 Government report)

In its first National Action Plan on Human Rights the Government announces that the ministry of Education, Culture and Science is considering the proposal that human rights, including children's rights, be mentioned explicitly in the attainment targets defined for primary and secondary education. The State Secretary affirms that all children should understand and be aware of the fundamental values contained in the Constitution and universal human rights instruments, including the rights of the child. However, no concrete initiatives to incorporate human rights education in the curriculum and strengthen human rights education in practice have been taken. In a series of meetings with school leaders, teachers, pupils and experts the Netherlands Institute for Human Rights learned that they are highly interested in human rights and finding ways and means to increase attention in schools. The link between human rights principles and school values appears obvious to them and they acknowledge that human rights may very well serve as a framework for the promotion of dignity, equality and responsibility. Schools and teachers indicate the need for further guidance in this.

The Institute suggests that the Committee seek further information from the Government to ensure that human rights education, including education on the rights of the child, becomes part of the curriculum and is being strengthened in practice. Which measures are envisaged to train teachers?

IX. Children in emergency situations: refugee children (par. 376 *et seq.* Government report)

In May and August 2014 the State Secretary of Security and Justice and Minister for Migration announced to change policy regarding detention of families with children at the border. As of September this group of refugees will undergo a screening. Families with children that are eligible for access to an asylum seekers' centre will be brought there to

await the response to their request for asylum. Those who are not, will no longer be placed in a detention facility during the first two weeks after arrival while awaiting the outcome of the asylum procedure. They will be transferred to a new location on a terrain they cannot leave, but where they can move around freely and that has various facilities to accommodate families with children. This new location will be available from early 2015.

The Institute suggests that the Committee seeks an update from the Government on the state of affairs to prevent detention of refugee children and members of their family and to specify how the Government monitors compliance of the new policy measures with the Convention.

X. Children and the criminal justice system (par. 387 *et seq.* Government report)

The Dutch Government has developed a methodology to deal swiftly with frequently occurring crimes. This is referred to as the ZSM method of work. While the Netherlands Institute for Human Rights recognizes a number of benefits of this method of work, it draws the attention to some concerns, in particular where minor suspects are involved.

1. Fair trial before an independent and impartial judge

Under the ZSM procedure, a public prosecutor, not an independent judge imposes a sanction. This is compatible with the right to a fair trial only if the accused has the opportunity to submit his case to an independent judge. The Code of Criminal Procedure provides for the right to do so, but this can be waived. There is a risk that the accused waives his right without being fully aware that he does so, or without being fully aware of the consequences, which include a conviction of a criminal offence. It is crucial that accused juveniles are fully informed of the right to have access to an independent judge and of the consequences of waiving their right to make use of this possibility.

2. Legal assistance

In cases dealt with under this procedure, only a limited number of suspects makes use of the right to legal assistance. The swift handling of the cases is not only the wish of the authorities, but also of the accused. This partly explains this situation: involving legal assistance may easily delay the proceedings, so an accused rather chooses not to make use of his right to consult a lawyer. The absence of a lawyer may hinder an effective defence, which has been recognized also by the authorities. A pilot project has been started, offering the accused the possibility to consult a lawyer by means of a video connection. A significant investment is required to put in place the technical infrastructure to ensure confidential communication between the lawyer and his client.

For juvenile offenders, access to counsel is particularly crucial to ensure the right to an effective defence. It is imperative that juvenile suspects are fully informed of their right to legal assistance and that access to this right is facilitated. The Institute has welcomed the pilot project. It has underlined the crucial role of legal counsel in criminal proceedings and has recommended that the ZSM method of work should be abandoned if effective access to legal assistance cannot be guaranteed promptly.

It is suggested that the Committee seeks further information from the Government on the compatibility of the ZSM method of work with the requirements of article 40 of the Convention.

XI. Child trafficking (par. 471 *et seq.* Government report)

1. Prevention of trafficking within the Netherlands

The report of the Netherlands describes several measures aimed at preventing trafficking of minors within the Netherlands. After the publication of this report, the Government took additional preventive measures to increase the resilience of girls and young women. These include the development and distribution at schools of an educational movie on risks involved in using social media and a campaign ('we can young') aiming to raise awareness on gender equality and to promote decent and respectful behaviour towards others.

The Government has taken quite some measures to prevent trafficking within the Netherlands. However, the effects of these measures are unclear. The Netherlands National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children raised this as a concern in her annual report. In 2013, the UN Committee Against Torture recommended that the Government starts an investigation into the effectiveness of the preventive measures. In addition, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) invited the Dutch authorities to plan future awareness raising actions in the light of the assessment of the impact of previous awareness-raising measures.

The Netherlands Institute for Human Rights suggests that the Committee asks the Government to respond to these concerns and recommendations formulated by experts on trafficking in human beings. It suggests to ask the Government to explain how it will measure the effectiveness of its measures to prevent human trafficking of minors within the Netherlands, and how it will subsequently ensure that the findings will be used to either intensify measures that are successful or adapt measures that are less successful.

2. Training of professionals (par. 510 *et seq.* Government report)

Experts, including the Netherlands National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, have expressed concern about the lack of expertise within the youth care sector to recognize (potential) victims of trafficking within the Netherlands. Consequently, there is a serious risk that victims are not recognized, registered or treated as such. This appears to be due to a lack of expertise of youth care staff, who do not, unlike other professional groups, receive specific training on this issue. In April 2014, a commission was established to draw up an action plan that should lead to better recognition, registration and care for child victims of trafficking. The commission aims to publish its report in the fall of 2014.

In its report on the Netherlands, GRETA recommended that the Government set up specific identification mechanisms, which take into account the special circumstances and needs of child victims of trafficking, and which involves child specialists and ensures that the best interest of the child is the primary consideration.

The Netherlands Institute for Human Rights suggests that the Committee invites the Government to provide an update on recent developments in the area of child victims of trafficking within the Netherlands.

XII. Adequate standard of living of children in the Caribbean part of the Netherlands (Section 2 of the Government report)

Poverty in the Caribbean part of the Netherlands is a serious problem. As the Government report describes, an exploratory study has been carried out by the Ministry of Social Affairs and Employment.

The Government report presents only limited information on this issue. Reports by other bodies such as UNICEF Netherlands, pointed to the seriousness of the situation and the impact of poverty on children in different aspects of their lives. For example, a connection between poverty and the prevalence of domestic violence has been noted. Also, poverty affects single mothers disproportionately, which obviously also affects children in these households.

Responding to the UNICEF reports all parts of the Kingdom of the Netherlands are now committed to jointly improve the state of children's rights. A taskforce on children's rights has been established; on 20 November 2014 a draft of a Children's Rights Plan for the Caribbean part of the Kingdom of the Netherlands will be available.

The Netherlands Institute for Human Rights suggests that the Committee invites the Government to provide an update of the information presented in the report, in particular on the poverty situation and its impact of on the enjoyment of human rights by children. In particular, the Committee may wish to seek further details on the application of the Convention in the Caribbean part of the Netherlands with respect to social and economic rights.