**Additional information following the 89th pre-session The Netherlands**

**Reservation Article 26** **(1ste round of questions)**

In order to enjoy the benefits of social security, Dutch children depend on their parents. As a result, certain groups of Dutch children are unable to make sufficient use of the benefits of social security. New research conducted by the Verweij-Jonker Institute in collaboration with Utrecht University addresses the way in which the Dutch state views children.\* In the Netherlands, children have no independent rights and are not seen as autonomous rights holders. The reservation to Article 26 CRC is an example of the way in which the Dutch state views children. They are not seen as fully autonomous and are dependent on the choices of their parents. Eight groups of children are distinguished who have insufficient access to social services. One of the groups are children of parents who are (wrongly) accused of fraud; like recently the parents in the child benefits affair (*kinderopvangtoeslagenaffaire*). Respondents in the survey argue without exception for the withdrawal of the reservation because they believe that in the Netherlands the position of children is too derived from parents. Withdrawing the reservation makes it possible to focus on the child in the most distressing cases. That is not happening enough now. The social security system is currently failing children in vulnerable situations.

* Verweij-Jonker Instituut (2021), *Kinderen missen zelfstandig recht op sociale zekerheid*, Utrecht. <https://www.verwey-jonker.nl/wp-content/uploads/2021/06/220260_-kinderen_missen_zelfstandig_recht_op_sociale_zekerheid_WEB.pdf>

**Early education (2nd round of questions)**

On 17 May 2021, the Netherlands Institute for Human Rights published the memorandum 'Towards inclusive childcare'. The Institute wrote the memorandum in response to a letter from various organisations, including Defence for Children the Netherlands, parents and employees of a childcare organisation.

The Netherlands Institute for Human Rights states that childcare and facilities for pre-school/early education in the Netherlands are currently not set up for broad accessibility, and that they are unsuitable for the inclusion of children with disabilities. Accessibility and inclusion of children with disabilities are not an explicit part of the current framework. The municipal responsibilities in the context of pre-school/early education and opportunities for cooperation with (youth) care do not appear to be sufficient for achieving inclusion in the manner advocated by the UN Convention on the Rights of Persons with Disabilities. In addition, legal barriers with regard to the cooperation between different fields block inclusive pre-school/early education.

With the memorandum, the Netherlands Institute for Human Rights calls on the government to develop further policy in the field of inclusive childcare and pre-school/early education for children with disabilities, based on the principles of the UN Convention on the Rights of Persons with Disabilities.

**Migration (2nd round of questions Mr. Benoit van Keirsbilck)**

*“Linked to the detention of migrant children, is there any external and independent monitoring body that oversights the detention especially of children ? And is there legal, effective and accessible legal remedies to bring the case of detention to a court and take the situation of the child into account? Do you know some recent jurisprudence on this issue?”*

No, there’s no external and independent monitoring body that oversights immigration detention of unaccompanied and accompanied children.

In the Netherlands, the **decision to enforce migration detention** (including for children and families) is made by civil servants from the Department of Returns (Dienst Terugkeer en Vertrek, DT&V) of the Ministry of Justice and Security. **This decision is based on the law (Article 50 of the Dutch Aliens Act 2000), but is not reviewed by a judge prior to detention.** This means that **the decision is effectively the outcome of an assessment by the DT&V, who evaluate the risk of abscondment. The DT&V officials must assess whether the situation is such that imprisonment is lawful**. The Dutch Children’s Ombudsman questions whether the assessment is carried out with sufficient care in some cases. Previously, the general prosecutor was responsible for the decision regarding detention. However, over the years this responsibility has gradually shifted from the prosecutor to the DT&V (the State Secretary of Justice and Security decided to structurally change the policy). This development has repeatedly been criticized by the Dutch NGO coalition ‘Geen Kind in de Cel’ (‘No child in a prison cell’).

Since 2014, the DT&V (the organization authorized to make decisions about the detention of children and families), has held that there is an inherent risk of absconsion from certain families or one of their members. In practice, this implies that every family that fails to return voluntarily is considered at risk of absconding. Generally, therefore, the forced returns process for families automatically includes detention.

The decision to detain a child or family must be made while taking account of the individual circumstances of the case. This must be extensively motivated. Besides the general requirements that apply to every case of migration detention, such as illegal entry or the failure to co-operate with the determination of one’s identity, the medical background, the age of child(ren) and, in the case of families, the composition (integrity) of the family unit is taken into account.

In cases of unaccompanied children, detention is only considered applicable if there is a strong reason for so doing, namely:

* the unaccompanied child is suspected of or convicted for a criminal offence; or
* the forced return of the unaccompanied child can be arranged within a maximum of 14 days; or
* the unaccompanied child has previously absconded and did not respect the duty to report or another measure restricting their freedom of movement.

Both unaccompanied children and children in families must be placed in the Closed Family Location in Zeist within five days following their apprehension.

It is possible to appeal against the decision to impose detention on a family with children or an unaccompanied child. In most cases, this appeal is made, and the court assesses the legality of the detention. It should be noted that this assessment is often carried out some time after the detention decision has been taken. This means that the children have been in detention for a few days. Sometimes, the appeal against detention is only processed after a family has already been expelled. In these cases, all that remains to be resolved is possible compensation should the judge deem that the detention was unlawful.

In some situations, there may also be an appeal against the lengthening of a detention. For example, this may be applicable when a family/child submits a new asylum application while in detention. The policy then offers the possibility of longer detention to treat the asylum application made while in detention. In the case of children, this can mean that the period of fourteen days (the maximum time allowable for detention in the Netherlands) is exceeded. The option of prolonged detention is pursuant to Article 59b of the Dutch Aliens Act 2000.

Apart from the appeal proceedings against the detention, there may be a procedure on the legality of the expulsion, often in relation to a pending residence process. In this process, the court may prohibit an expulsion. In many cases, this leads to release from the detention centre, since a family has then held lawful residence for some time. However, the lawfulness of the detention measure is not addressed during that process.

*“Wonder if children's views are taken into account in these (asylum) procedures? Usually, it's only the situation of the parents that are looked at.”*

No.We see that the interests of children are not sufficiently and systematically taken into account and children’s views are mostly not taken into account in the asylum procedure, especially before return. The best interest of the child is not included in Dutch Aliens Act, and it’s not operationalized in a systematic manner)

It’s somewhat positive that the immigration service state they take the best interest into account. However, no information is provided how this is done, based on what method etc. There’s no formalized BID: not based on research, not sufficiently thorough, and does not include input or other involvement from the child or from experts, guardians nor lawyers. Also, no BID carried out before return.

With regards to the returns procedure, children – especially children in families – are often overlooked. Examples:

* lack of child-specific information on the country of origin ;
* lack of preparation for returns for children, and limited support, incl. absence of child-friendly information on returns and no systematic, individualized return plans prepared for children;
* Child-specific reasons for flights are not consistently taken into account;
* After the return lack of monitoring for both voluntary and enforced returns;
* Guardians have high case-loads, and often not enough time to properly support the unaccompanied minors;
* Children in families are not separately heard and their views and specific situation is not taken into account in both the asylum as well as in the return procedure;
* Lawyers and guardians are often not present in return meetings that involves children.

It’s positive that there’s a dedicated team within the Returns Department of the Ministry of Justice especially for unaccompanied minors. However, no specialist or no extensive training on communicating with children. We’ve stressed this many times with the Minister of Migration, and she agreed that training of this team (and the other case-managers of the DT&V and IND who work with children), should receive training on this. So far, this has not been put into place.

In this regards, as NGO’s we have the following recommendations:

* Provide training and develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every asylum request (Ministry of Justice & Security, Immigration and Naturalization Service).
* Strengthen the role of the guardians in the return process of unaccompanied children. A more active role for the guardian can contribute to a sustainable prospect for unaccompanied children whose application for asylum has been rejected, and accordingly
* Ensure that the guardians and lawyers are present during the interviews and in the return meetings with DT&V (Ministry of Justice & Security, Repatriation and Departure Service, Nidos + immigration lawyers);
* Provide specialized training for immigration lawyers and other legal advocates on children’s rights and child-appropriate practices (Immigration lawyers);
* Make sure that legal support is available during the return process and that immigration lawyers are involved in the return process. Lawyers might be more inclined to do so if compensation for this part of the asylum process were made available (Ministry of Justice & Security, Repatriation and Departure Service + immigration lawyers)
* Provide training to employees of the Repatriation and Departure Service and to immigration lawyers on supporting children. This training should include child-specific communication techniques (Ministry of Justice & Security, Repatriation and Departure Service);
* Intensify efforts to reduce the backlogs in the asylum application and return process and prevent further delays, including strengthening the capacity of the immigration and naturalization services. The authorities should make sure to adhere to the time allotted for the procedures. Children, whether unaccompanied or within families, need as soon as possible to have clarity about the potential of staying or the obligation to return. The current lengthy procedures are extremely harmful to children (Ministry of Justice & Security, Immigration and Naturalization Service);
* Consistently consider child-specific reasons for flight in family asylum procedures (Ministry of Justice & Security, Immigration and Naturalization Service);
* Develop and use child-specific country reports/information in all asylum procedures (including return) for both accompanied and unaccompanied children (Ministry of Justice & Security, Immigration and Naturalization Service);
* Make sure that immigration lawyers and/or guardians are present at return meetings with the Repatriation and Departure Service (DT&V) and IOM. Compensating lawyers for this part of the asylum process should be considered (Ministry of Justice & Security, Repatriation and Departure Service, IOM + immigration lawyers).
* Prepare children for their return as thoroughly as possible, by involving them in the return and by making sure that they receive, in a child-friendly way, all relevant information about the return process, the decision, and reintegration in the country of return. This includes child-friendly and child-specific counselling sessions (Ministry of Justice & Security, Repatriation and Departure Service);
* Make sure involved organisations coordinate their work for families and children in return procedures (Ministry of Justice & Security, Repatriation and Departure Service, NGOs, Child Care and Protection Board);
* Perform thorough family assessments before returning an unaccompanied child to the family, based on the rights of the child (Ministry of Justice & Security, IOM and Repatriation and Departure Service);
* Make sure that procedures for family tracing and contact are based on the rights of the child, meaning that family tracing can only be performed if it is in the best interests of the child, if the child has given permission, and if it is conducted in a safe manner (Ministry of Justice & Security, Repatriation and Departure Service);
* Continuously assess the security situation of a country as part of the return procedure (Ministry of Justice & Security, Repatriation and Departure Service);
* Make sure that immigration lawyers are able to support children and families in return procedures (Ministry of Justice & Security, Repatriation and Departure Service);
* Establish an independent and thorough monitoring system (Ministry of Justice & Security, Immigration and Naturalization Service);
* Always develop individual return plans, including practical arrangements on education, medical care, housing, and work. Standardized individual return plans do not suffice (Ministry of Justice & Security, Repatriation and Departure Service).

**Ratification on OP III (2nd round of questions)**

*“Is the stonewalling about ratifications something frequent/recurrent with regard to transparency in government? Can parliament request being informed?”*

We do have the impression that the Netherlands government is indeed postponing decision-making on purpose, on all three protocols. The reasons are unknown to us and Members of Parliament have recently requested information specifically about the status of the OP under Convention on the Rights of Persons with Disabilities.

As stated in the pre-session, the government wants to decide upon the three protocols at once and not individually. We also want to note that the government seems to be of the opinion that there is an order between the conventions, in which the UN CRC would come last in time for ratification. This has been indicated by the Minister of Foreign Affairs in the past.

More broadly, there are worries about the functioning of Parliament. There have been serious scandals of misinformation or misleading parliament by the government. For instance related to the Child Benefits Affair.