

Submission NJCM / NHC / TI-NL / FPU – Rights of the Child

While Dutch authorities increasingly acknowledge children as a distinct and vulnerable group persistent structural tensions remain between law in practice and the obligation to safeguard the best interests of the child.

Although in last year's input also relevant developments were added related to children, these issues were not addressed in the Commission's recommendation. As there is no notable progress to these issues, our concerns remain about (1) children within the migration system, (2) children within the educational system, (3) children in youth criminal law and (4) children with youth care and youth protection.

Children within the migration system (1)

A persistent problem is the repeated relocation of children within the asylum reception system, with severe consequences for educational continuity and psychosocial stability. Although fundamental reforms are required, structural changes to the asylum chain have yet to be realized, leaving minors in instability as being frequently relocated, which threatens the right to uninterrupted development and education. Recent legislative developments disaffect minors in precarious situations, as the criminalization of irregular stay contributes to a broader climate of insecurity for undocumented families and children. Parliamentarians are concerned that by stretching the law it could potentially affect all adults without a secure residence status and indirectly children by normalizing prolonged uncertainty and fear as part of daily life for minors.

Unaccompanied minor asylum seekers (AMVs) are particularly impacted by policy changes following key court rulings. Dutch and EU courts have ruled that distinctions based on age as among unaccompanied minors are discriminatory and that return decisions may not be taken without first establishing whether adequate reception exists in the country of origin. This builds on EU case law which held that issuing a return decision before establishing whether adequate reception exists violates EU law and fails to respect the best interests of the child.

In response, the government has proposed reforms to the *no-fault* residence permit, granting rejected AMVs temporary residence for up to three years or until they turn 18 if return is not possible due to the absence of adequate reception. However, this policy explicitly frames residence as temporary and return-oriented, especially for 15+ minors, with no pathway to durable status, even where return is delayed for several years during their minority.

Reception practices reflect this approach: minors seen as having long-term prospects are supported toward integration (under *Nidos care*) while those with temporary permits remain in large-scale reception centers (COA) for extended periods. As a result, a growing number of minors spend extended periods in large-scale reception centers, often throughout their adolescence, while facing ongoing uncertainty about their future. From a child-centered perspective, prolonged stays in such settings risk undermining social development, emotional well-being and access to stable support networks.

Overall, while Dutch law increasingly acknowledges children's specific needs, it continues to prioritize deterrence, temporariness and return over long-term protection. For minor migrants, the legal framework does not merely determine residence status, but shapes the conditions under which they grow up, learn and develop.

This assessment raises concerns about whether Dutch policies sufficiently comply with (inter)national and European obligations to place the best interests of the child at the heart of migration governance.

Children within the educational system (2)

There is a decrease of children whose educational needs cannot be met and who drop-out of school (*thuiszitters*), involving high-sensitive or gifted children, children with special educational needs, children with (learning) disabilities, children with (school)trauma, etc. Last year parental association Balans calculated the amount of *thuiszitters* at approximately 70.000 children and another 280.000 children as deprived of proper education. Meanwhile the Children Ombudsman expressed her concerns and insisted on measures to tackle this problem.

One of the bottlenecks is the concept and dwelling term of ‘compulsory education’ (*leerplicht*), where children are obliged to receive and undergo an educational curriculum and where compliance is sought and enforced within the criminal system, as the focus is on the concept of unauthorized absenteeism (*ongeoorloofd schoolverzuim*). By focussing on *schoolverzuim* children, who are *unable* to attend school, are framed as being *unauthorized absent*, which results in *the perpetuation of policies* that focus on school redemption and re-attending school.

In contrast to this approach there is also a concept and view of ‘the right to education’ (*leerrecht*) where the right of a child to receive education and to develop him/herself is leading, as it shifts the paradigm from unwilling children into the focus to what an individual child needs to establish (holistic) development. Children who do not fit within the current educational system seem to be gifted, highly-sensitive children, children on the spectrum, traumatized children or children with learning disabilities. These children express feelings of loneliness, isolation and their mental and physical health is under strain. The government has initiated new legislation in order to push back school absenteeism, which is currently under consultation. However, the concerns remain because the governmental focus is on a better registry of the amount of *thuiszitters* from the concept of unauthorized school absenteeism, which does not align with the needs of these children. There is an upward trend in emerging initiatives to help these *thuiszitters* and the population of children who attend private schools are rising, showcasing the urgent need for fundamental reforms of the education system to safeguard children's rights to *development* and education.

Children in the youth criminal law (3)

Inequality in youth criminal law manifests itself in the fact that young people with a migrant background, disabilities, or low socio-economic status are more often identified as suspects, prosecuted, and end up in pre-trial detention. Unequal use of (pre-trial) detention has harmful consequences for young people and disproportionately impacts the well-being and future prospects of (disadvantaged) youngsters. Social problems such as poverty, staff shortages and waiting lists become individual problems for children. Young people in socio-economically disadvantaged neighbourhoods, *the risky child*, are at increased risk of becoming involved in crime, which means that recorded youth crime is concentrated in specific areas. This problem is particularly prevalent in large cities.

A recent statistical study of the influence of migration background on outcomes in the Dutch criminal justice system, shows that young suspects with a migration background are brought more often before the courts and are more likely to receive custodial sentences than suspects of similar offences without a migrant background.

A study was conducted into possible forms of unequal treatment of families and young people by the Child Protection Board services, in its role as an employer and how cultural sensitivity within the organization can be strengthened. More specific data on the impact of inequality within the youth justice system is lacking, and there will be an in depth investigation of inequality in youth criminal law.

Youth Justice Institutions (4)

The Council for the Administration of Criminal Justice and Protection of Juveniles (*RSJ*) concluded that the Dutch system of non-criminal dispositions for juveniles did not meet international children's rights standards.

The number of minors held in police cells or youth justice centers are increasing since 2024. Staff shortages in youth detention centers lead to problems with occupancy, the quality of accommodation and treatment, and also pose safety risks for young people. The reduction of pre-trial detention is hindered by the absence of adequate alternatives. One reason for this is the absence of adequate youth support services, which varies from one municipality to another and does not always meet the needs of children and youngsters. Unlike convicted offenders, minors that are in pre-trial or youth detention centers, do not receive treatment or guidance in their future preparations.

A shortened daily group program has been in effect in youth detention centers since February 2023, with activities reduced from 77 to 62 hours. This emergency measure, due to staff shortages and excessive workloads, is contrary to the Principles Act on Youth Detention Centers (*BJJ*) and the government intends to amend the *BJJ* in order to adjust the duration of the daily program.

In the Education Council's report on education for young people in youth detention centers it is advised to ensure effective organization of education and to develop a shared vision on the role and position of education within these centers.

Children with youth care and youth protection (4)

One in seven children receive youth care and youth protection and there remain concerns about this sector. Placement in a secure youth care facility means, due to the generally repressive climate, including searches after leave and the possibility of applying other freedom restricting measures, an increased risk of violence for young people. Although the Youth Act permits freedom restricting measures under strict conditions, recent findings by the European Committee for the Prevention of Torture (*CPT*) show that there are regular shortcomings in guaranteeing the fundamental rights of youngsters, in particular Article 3 of the *ECHR*. The use of pain stimuli, inadequate registration and insufficient supervision point to structural shortcomings. Current practice indicates a structural lack of central control, legal safeguards and effective control mechanisms. This calls into question the legitimacy of secure youth care under the rule of law, and the confidence in the government as the guardian of children's rights. A report of a young-expert who stayed himself in the special closed youth care wards (*ZIKOS*) shows experience of a repressive climate, with frequent use of freedom restricting measures.

The requirements for applying freedom restricting measures were more stringent in 2025, and introduced a stricter registration requirement than before. Although the *CPT* noted provided safeguards in the Act which ensure that freedom restricting measures are only applied when strictly necessary and in exceptional circumstances, it concluded however, that full implementation of the applicable legislation is necessary, as for example night-time confinement in cells frequently occurs. It urges the Netherlands to improve compliance with the law in this regard, to set child-appropriate standards and ensure proper implementation to remove the risk of ill-treatment when applying restrictive measures on children under the care of the state. Since 2024 it has been mandatory to submit a six-monthly overview of restrictive measures imposed (art 6.7.3 *Jw*), but according to the *CPT*, this has not been done properly to date.

Although some closed care facilities are scheduled to be shut down by 2030, the alternatives do not necessarily lead to better results for the children involved. There is a call for a fundamental reform of the system, with a shift from control to connection and appropriate support for children and youngsters. In

response to the ambition to close these institutions, there have been numerous noises about locking children in at night in their rooms, rolling back progress.

The concerns remain, for the (in)voluntary youth care and youth protection as well. Parents are often pressured (coerced) to accept child protection measures without judicial authorization to do so ('voluntarily' youth care) and without any legal protection, by example as a secret placement of a newborn into 'voluntary' State supervision without judicial involvement showcases.

There are fundamental shortcomings regarding safeguarding children's rights in practice, which remain unaddressed if they are not included in this year's Report. Although there are some steps taken by the government to improve the position of children, they are, however, not sufficiently thorough. According to last year's Child Right's Index, the Netherlands fell in ranking to the 21st place. According to the Child Right's Committee a Child Impact Assessment is necessary for every law and policy that may affect children, but this is not common practice in the Netherlands. There are serious concerns about inequality of opportunities regarding various topics. There is a major mental health crisis amongst Dutch children and young people, partly due to the abovementioned topics where children reported serious mental health issues. The shortcomings will not evaporate and urgent reforms are needed.

The need for urgent reforms in order to combat inequality for disadvantaged, migrant children, regarding the asylum chain, youth criminal law, education system and youth care and youth protection.