



The Permanent Representation of the Kingdom of the Netherlands to the United Nations and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner of Human Rights and, with reference to the joint communication of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance of 21 September 2018, has the honour to convey the following.

The Working Group of Experts and the Special Rapporteur brought to the attention of the Government of the Netherlands a case of alleged racial discrimination in the child welfare system. They expressed their concern about alleged racial discrimination in the child welfare system and lack of judicial review, in relation to an individual case regarding the out-of-home placement (*uithuisplaatsing*) of seven children.

The Government, first of all, wishes to reiterate its full support for the respective mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur. The Government equally accepts that a proper fulfilment of those mandates may require investigations into individual situations of alleged discrimination, to which states are under an obligation to cooperate, if so requested.

However, the Government also wishes to point out that the Netherlands is a party to the individual complaints procedures under the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of Racial Discrimination and the Convention on the Elimination of Discrimination against Women. In addition, the Netherlands is a party to various regional complaints mechanisms, most importantly the individual right to apply to the European Court of Human Rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court's judgments are binding on the state.

The Netherlands has for many years been confronted with individual complaints under each of these mechanisms and currently has almost 100 cases pending. These complaints are taken seriously and responded to in a most thorough and coordinated manner, involving all relevant government services.

This means that individuals, including those involved in the present complaint, who are of the view that their rights were not respected by the state, have recourse to several judicial and quasi-judicial avenues at the international level, provided of course that domestic remedies have been exhausted.

One important aspect of the mentioned individual complaints mechanisms is that any doubt about the complainants' approval to share personal data with the international organ concerned may be avoided.

The Government encourages the Working Group of Experts and the Special Rapporteur to exercise prudence in seeking publicity first and foremost with a view to the children's privacy and the protection of personal data. In that regard the Government would urge the Working Group of Experts and the Special Rapporteur not to reveal any of the names of the children or parents (or other reducible information) of this case in any public remarks, or to keep the communication unpublished in its entirety.

The Government appreciates the opportunity to provide the Working Group of Experts and the Special Rapporteur with additional information about the judicial procedure in the Netherlands in order to create a more accurate picture of the whole situation, to put the case at issue into its proper perspective and to avoid any misunderstandings.

The Government considers the description of the situation, set out in the joint communication of Working Group of Experts and the Special Rapporteur of 21 September 2018, incomplete and partly incorrect. The information provided below indicates that the out-of-home placement of the children in the present case was necessary in the best interest of the children and that the out-of-home placement decision was subject to judicial review. The Government sees no reason to conclude that there was prejudice or discrimination. With a view to the children's privacy, the Government prefers not to go into details of the individual case. From the description of the Dutch procedure of child protection hereafter it becomes clear that the procedure contains sufficient guarantees to ensure that any formal decision is based on objective grounds and centers on the best interests of the child. Since all regular procedures were followed, those guarantees were also present in the case at hand.

The Dutch system of child protection functions as follows.<sup>1</sup> At the request of (among others) the Child Care and Protection Board (*Raad voor de Kinderbescherming*), a family court can order a family supervision order (*ondertoezichtstelling*) and out-of-home placement if the child(ren)'s interests are seriously threatened and voluntary assistance is no longer sufficient because the parents are not able or competent to raise their children or refuse the necessary help. Prior to such a request, the Child Care and Protection Board carries out an investigation in order to clarify the situation of the child(ren) and the family. This investigation can, for example, be initiated after the Domestic Violence and Child Abuse Counselling and Reporting Centre (*'Veilig Thuis'*) receives a notification of concerns. If the investigation, which centers on the question of what is in the best interests of the child, reveals that the development of a child can only be safeguarded with mandatory assistance because voluntary assistance is no longer sufficient or the parents refuse voluntary assistance, the imposition of a so-called child protection order, such as a family supervision order or an order to place a child in a foster home, may be ordered for the maximum time of a year.

If a situation is urgent and severe, the safety of a child is at risk and an immediate measure is deemed necessary to protect the child, acting quickly may outweigh awaiting the Child Care and Protection Board's investigation. In such situations, the Board may request the court to give its decision

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<sup>1</sup> For more information see attached brochures: "About the Child Care and Protection Board"; "When parenting is a problem" and "When your child has been placed under supervision".

immediately. The court, if of the opinion that the situation requires immediate action, may then impose a so called *provisional family supervision order* and an immediate out-of-home placement without hearing the parents and children in advance. It is required, however, that a hearing at the family court takes place within two weeks. After having heard all interested parties, including the parents and children (if children are older than twelve this is legally required, but younger children are heard if possible), the court decides whether the immediate measure(s) should continue.

Subsequently, the Child Care and Protection Board has three months to complete the investigation and, if necessary, request continuation of a child protection order at a court hearing to which all interested parties are invited to be heard. Those involved in the investigation have the opportunity to read and comment on the report beforehand. The court bases its decision on what is in the best interests of the child. The parents avail of the possibility to lodge an appeal against the decision within three months.

Courts do not take child protection orders lightly. They attach importance to the opinion of the parent(s) and child(ren), who may choose to be assisted by a lawyer. Furthermore, the court's decision is based on objective grounds which are laid down in national and international law.

The court orders that the task of supervision should be appointed to a certified institution, which operates within the responsibility of the municipality concerned. A family supervisor of the certified institution is charged with the enforcement of the family supervision order and has to ensure that the parenting problems which threaten the child(ren)'s development are solved. A family supervisor helps and supports parent(s) and child(ren), initiates the assistance that is needed and may give instructions to parents, which the parents must follow. To this end the family supervisor draws up an action plan. Since the type of assistance depends on the situation of the family, the family is closely involved in drawing up the action plan.

In the present case, the Domestic Violence and Child Abuse Counselling and Reporting Centre ('*Veilig Thuis*') received a notification of concerns about the children's situation in February 2018. The family had already received assistance with their situation from the Domestic Violence and Child Abuse Counselling and Reporting Centre on a voluntary basis in 2017, but that voluntary assistance had ended in May 2017. Following the notification of concerns, the Child Care and Protection Board considered that the situation was sufficiently urgent and severe to ask the court on 17 May 2018 for a *provisional family supervision order* and an immediate out-of-home placement to secure the safety of the children. Both measures were granted on the same day. Afterwards, within the required period of two weeks, all interested parties, including the parents, were heard.

By decision of 11 June 2018, the court extended the out-of-home placement for seven days. Subsequently, on 18 June 2018, the court decided to extend the out-of-home placement until 17 August 2018. On 16 August 2018, after the Child Care and Protection Board's investigation had been finalized, the court considered it to be in the best interests of the children to impose a family supervision order until 16 August 2019 and out-of-home placement until 16 February 2019. The court ordered the certified

institution to report on the children's situation in the meantime. It is possible to lodge an appeal against the decision within three months.

In addition to the possibility of appeal against the decision of the court, any dissatisfaction about the procedure in the present case, e.g. with regard to the submission of documents, the relation with the family supervisor, the arrangements concerning the assistance of an interpreter, or the treatment of clients by the Child Care and Protection Board or the family supervisor, could be brought forward in a complaints procedure at the institution concerned. In such a procedure, the institution concerned will hear all those involved and decide whether or not the complaint is well-founded.

Furthermore, the Government wishes to note that claims of racial discrimination may be reported with the police and at local anti-discrimination services (*Anti-Discriminatie Voorzieningen*). Victims can request findings free of charge from the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) and file a complaint at the National Ombudsman.

According to the Government there are sufficient guarantees in the national procedure to prevent or remedy discrimination in individual cases.

Finally, the Government wishes to underline that there are no (and have not been any) indications that the Dutch system of child protection is structurally discriminatory.<sup>2</sup>

The Permanent Representation of the Kingdom of The Netherlands to the United Nations and other International Organisations in Geneva avails itself the opportunity to renew the to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 25 October 2018



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<sup>2</sup> This can be concluded from, for example, the 'complaint analysis' the Child Care and Protection Board publishes annually. This 'complaint analysis' contains all registered complaints that were submitted to the Child Care and Protection Board in the year concerned. The analyses of the previous years do not reveal any complaints concerning discrimination. The analyses may be found at: <https://www.kinderbescherming.nl/over-ons/ons-onderzoek-feiten-en-cijfers/klachtenanalyse>