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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 for Human Rights and, with reference to a case of alleged racial discrimination in the Dutch child welfare system, has the honour to reflect on the extensive dialogue with the UN Special Procedures, and, after presenting some observations on the latest concerns in relation to the parents' asylum applications, to come to a procedural conclusion of this case.

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

Genève, 9 December 2020



Office of the High Commissioner for Human Rights
(OHCHR)



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On 28 July 2020, a Joint Urgent Appeal concerning the above-mentioned case was addressed to the Government of the Netherlands by the Working Group of Experts on People of African Descent; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on discrimination against women and girls.

This case was first brought to the Governments' attention by 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 in a written communication, dated 21 September 2018. Since then, the Government has engaged in an extensive dialogue with these UN mandate holders. Multiple written communications have been submitted and confidential discussions have taken place at the invitation of the Government.

In previous written communications,¹ in particular the Government's letter of 25 October 2018, the Government elaborated on how the Dutch system of child protection functions. The Government explained, among other things, that child protection orders are issued by courts, on the basis of objective grounds, which are laid down in national and international law. The child's safety and well-being are central to the system and, accordingly, the primary consideration in these procedures. The Government wishes to refer once again to those communications.

In the present written communication, the Government wishes to reflect on the extensive dialogue with the UN Special Procedures,² and, after presenting some observations on the latest concerns in relation to the parents' asylum applications, to come to a procedural conclusion of this case.

Applications for international protection

The Government notes that in the Joint Urgent Appeal of 28 July 2020, the UN mandate holders express their concerns in relation to the asylum applications of both parents. In response to these concerns, the Government wishes to stress the following. The Government will not disclose any personal aspects of asylum applications, since it is under an obligation to keep all information regarding an application for international protection confidential.³ Also, in addition to the confidentiality issue, it is important to note that the individuals in this case have not yet gone through all the procedures to extend their lawful residence in the Netherlands.

In general, the Government wishes to explain the following about the Dutch asylum procedure.

The Netherlands respects the principle of *non-refoulement* and does not send any person back to their country of origin if he or she would face a risk of being persecuted or subjected to torture or inhuman or degrading treatment. To assess this risk, the Netherlands has set up an asylum procedure with all necessary safeguards, in which an applicant for international protection can explain in person during an interview as well as in writing why he or she should qualify for

¹ Most importantly the communications of 25 October 2018, 17 April 2019 and 13 September 2019.

² In previous communications: the Working Group and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

³ Articles 30 and 48 of the European Directive on common procedures for granting and withdrawing international protection (Directive 2013/32/EU), Article 37 of the European Qualification Directive (Directive 2011/95/EU) and Guidance Note on Extradition and International Refugee Protection of UNHCR, April 2008, point 93).

protection in the Netherlands. During this procedure, applicants are assisted by an authorised representative and there are interpreters available.

The procedure for withdrawal of a residence permit is also surrounded by all necessary safeguards. The person concerned can express objections to the intention of withdrawal, both in person during an interview and in writing. If it becomes clear that he or she would face a risk of being persecuted or subjected to torture or inhuman or degrading treatment upon return to their country of origin, he or she will be allowed to stay in the Netherlands. In the event of a negative decision, the applicant may appeal to an independent court, where he or she can be assisted by an authorised representative and interpreter. Subsequently, there is a possibility to appeal to the Administrative Jurisdiction Division of the Council of State. In case of a withdrawal, there may still be a possibility for the person concerned to obtain a residence permit on the basis of, for example, article 8 of the European Convention on Human Rights (right to respect for family life).

Dialogue with the UN Special Procedures

As stated above, the Government has engaged in an extensive dialogue about this case of alleged racial discrimination. Throughout this dialogue, the Government aimed at all times to carefully address and respond to the questions and concerns of the UN experts involved in this case. Extensive explanations were provided both in writing (see above) and in confidential discussions on 20 June 2019 and 2 October 2019, which were initiated by the Government and took place at ministerial level and at staff level.

The Government regrets that throughout the dialogue with the UN mandate holders, a recurring issue has been that the information provided by the Government did not seem to be reflected in their conclusions. Acting upon a complaint of the parents and information provided by them, it seemed that the UN experts were not receptive anymore to a different explanation of the circumstances of the case. Unfortunately, this has resulted in a structurally inaccurate and incomplete account of the case from which conclusions were drawn. The most recent Joint Urgent Appeal again illustrates this.

Another recurring concern throughout the dialogue has been the issue of confidentiality. Since the UN Special Procedures normally publish written communications online and often seek publicity through press statements, the Government has repeatedly emphasised the importance of confidentiality of sensitive information concerning individual child protection cases. Above, it was also explained that the Government is under an obligation to keep all information regarding asylum applications confidential.

It astonishes the Government, therefore, that the Joint Urgent Appeal of 28 July last again contains details about the case and, moreover, names of the children and parents. The Government wishes to emphasise once again that publication of this sensitive and personal information, together with potential media attention, is harmful to the children, who are in a vulnerable position and need protection from media exposure. The Government would urge the UN experts again to exercise prudence in seeking publicity and, moreover, not to reveal any of the names of the children or parents, or to keep the communication unpublished in its entirety.

Conclusion

In light of the above, the Government would conclude the following. First, the Government wishes to reiterate its full support for the respective mandates of the UN experts involved in the present case. The Government accepts that a proper fulfilment of those mandates may require inquiries into individual situations.

However, in this particular case the Government is of the opinion that it has provided exhaustive explanations to the experts and does not see how further exchanges would contribute to a better understanding of the case and hence to more balanced conclusions in which the children's best interests are the first priority. It therefore no longer sees fit to continue the dialogue with the UN Special Procedures about the present individual complaint.

In this context, the Government wishes to point out that all individuals, including those involved in the present complaint, have recourse to several judicial and quasi-judicial avenues at the national and international level. The Netherlands has accepted the individual complaint procedures under

various international human rights instruments.⁴ In addition, the Netherlands is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the basis of which individuals have a right to apply to the European Court of Human Rights. The Court's judgments are binding on the state.

This means that individuals who are of the view that their fundamental rights were not respected by the state, can submit a complaint to these international institutions, provided of course that domestic remedies have been exhausted.

⁴ In particular 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.



Permanent Representation of the Kingdom of the
Netherlands to the United Nations Office and other
International Organisations in Geneva

our reference: gev-pa 055/2019

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Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10



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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, by letter of 21 September 2018. They expressed their concern about alleged racial discrimination in the child welfare system and alleged lack of judicial review in relation to an individual case regarding the out-of-home placement (*uithuisplaatsing*) of seven children from one family. In its letter of 25 October 2018 the Government of the Netherlands explained the system of judicial review in cases of out-of-home placements and explained that this judicial review had also taken place in the case at hand. In their letter of 15 February the Working Group of Experts and the Special Rapporteur raised several additional questions.

The Working Group of Experts and Special Rapporteur requested the following information in particular. First, they asked which checks exist to ensure children are removed solely on the basis of the assessed risk and to exclude any potential racial bias in decision making processes. Secondly, they asked the Government what steps have been taken with respect to awareness raising among judicial and non-judicial staff in the child welfare system to ensure a better understanding and more active prevention of racial discrimination.

The Working Group of Experts and Special Rapporteur further asked for specific data or information on potential racial discrimination in the child protection system. Specifically, they wished to have a greater understanding of the number of parents of African descent (a) reported, (b) investigated, and (c) subject to child removals in the Dutch system, as well as (d) allowances of visitation (supervised or unsupervised), (e) family reunification efforts (counselling, services, and other efforts at assistance after removals), (f) routine use of police in meetings and court appearances, and (g) eventual reunifications of parents and children – as compared to the overall numbers for all parents involved in the system.

With regard to the first two questions, the Government would submit the following.

An out-of-home placement is a measure with far-reaching consequences for both child(ren) and parents. As described in the letter of 25 October 2018, the child's best interests form the primary consideration for the Dutch Child Care and Protection Board (*Raad voor de Kinderbescherming*) when requesting an out-of-home placement. The Child Care and Protection Board duly reasons its

decision and carefully weighs the interests of all those involved, taking into account potential damaging effects the out-of-home placement may have for the child(ren) concerned. The quality of the Child Care and Protection Board's work is ensured and enhanced in various ways.

First of all, the Board's investigators work according to the 'professional standards' (*professionele standaard*), which consist of the 'Professional Code for Youth and Family Professionals' (*Beroepscode voor de Jeugd- en Gezinsprofessional*)¹ and the 'Guidelines for child care and child protection' (*richtlijnen jeugdhulp en jeugdbescherming*).²

The Professional Code puts forward ethical guidelines for every professional who works in child care and child protection and describes standards for their daily practice. Every professional category in child care and child protection has its own Professional Code. Professionals in child care and child protection face dilemma's on a daily basis. The Professional Code is a source of support for them when they need to weigh or balance different considerations in an individual case. Professionals use the applicable Professional Code to assess their own practices and to reflect on them with coworkers. In this way, the Professional Code contributes to the development of the individual professional and the development of the profession as a whole.

The Professional Code for Youth and Family Professionals states that the youth and family professionals' attitude should be characterized by respect for clients, irrespective of sex, race, culture and sexuality. Professionals are attentive of the risk of racial bias and acknowledge diversity and historical- and culture-specific experiences of their clients. They respect that every family, within the boundaries of the law, make their own decisions in raising their children. The Professional Code for Youth and Family Professionals further requires professionals to pay attention to current developments, research findings and new insights that may be of relevance to their work and urges them to be particularly attentive to cultural diversity in their work.

In addition to the Professional Code, the professional standards consist of the guidelines for child care and child protection, which are based on the latest scientific insights. These guidelines, which are acknowledged by the Netherlands Youth Institute (*Nederlands Jeugdinstituut; NJI*),³ deal with a number of themes, such as out-of-home placement, trauma and child abuse and provide recommendations and guidelines for Child Care and Protection Board professionals in their daily work. The 'Guidelines Out-of-home Placement' (*Richtlijn Uithuisplaatsing*) provide for recommendations with regard to the out-of-home placement decision-making process in order to ensure careful decision-making. They aim to stimulate early and frequent ambulant interventions in order to achieve the desired improvements for the child(ren) concerned within the family home. These Guidelines pay special attention to families with a migration background. They underline the importance of taking into account families' cultural background and to respect the family's culture, values and norms as much as possible, with the exception of activities, values or norms that violate Dutch law. The Guidelines further urge professionals to realize that identity can be defined

¹ See <https://skjeugd.nl/wp-content/uploads/2017/12/Beroepscode-jeugd-en-gezinsprofessionals.pdf>.

² See <http://richtlijnenjeugdhulp.nl/>.

³ See <http://www.youthpolicy.nl>.

and experienced differently in different cultures. For example, the importance of obedience towards adults or to conform oneself to a certain group may differ according to culture; taking initiative can be considered rude in one culture while it may be considered a form of desired assertiveness in another. The Guidelines raise awareness on these issues and prescribe openness from professionals for these kinds of cultural differences.

The Guidelines also prescribe that professionals realize that Dutch law prohibits and criminalizes violence in the upbringing of children. Some cultures are more accepting of violence as a part of the upbringing. However, professionals need to define clear boundaries with regard to acceptable and unacceptable behavior, on the basis of the law.

In addition to the Professional Code and the Guidelines discussed above, the Dutch Child Care and Protection Board's Quality Framework (*Kwaliteitskader*)⁴ is applicable to the Board's daily work. The Quality Framework is an internal document with guidelines and quality requirements for Board employees dealing with individual cases. The Quality Framework prescribes the 'four eyes-principle', according to which there are always at least two professionals involved in the decision-making process. Of these professionals at least one is a child welfare investigator who works for the Board. Investigators are always supported by a behavioral specialist. The Board's investigation is thus always multidisciplinary. The child welfare investigator must be registered with the 'Quality Register Youth Foundation' (*Stichting Kwaliteitsregister Jeugd, SKJ*; see further below) and must therefore comply with the Professional Code and work according to the professional standards. The child welfare investigator consults the behavioral specialist on various moments during the investigation and decision-making process. If necessary, the child welfare investigator may also consult a legal expert in different stages of the investigation. This multidisciplinary character of the investigation and the fact that always at least two professionals are involved in the decision making process enhance objectivity and ensure that decisions are based solely on risk and not on racial bias.

According to the Quality Framework, the guiding principles for the Child Care and Protection Board are subsidiarity, proportionality, equality before the law and legal certainty. The Quality Framework pays special attention to the following provisions of the Convention on the Rights of the Child:

- Every child's rights shall be respected and ensured, without discrimination of any kind (Article 2).
- In all actions concerning children, the best interests of the child shall be a primary consideration (Article 3).
- Every child has the right to life; the protection of this right and the healthy development of the child shall be ensured (Article 6).

⁴ See <https://www.kinderbescherming.nl/documenten/publicaties/2016/11/03/kwaliteitskader-van-de-raad-voor-de-kinderbescherming-2016>.

- A child shall not be separated from their parents against their will, unless such separation is necessary for the best interests of the child and is carried out according to the procedures laid down in law (Article 9).
- Every child has the right to be heard and express freely their views in every judicial or administrative procedure that concerns them (Article 12). The weight that is given to the child's views is dependent on the age and maturity of the child.

As stated above, child welfare investigators who are responsible for the Board's investigations have to be registered with the 'Quality Register Youth Foundation' (*Stichting Kwaliteitsregister Jeugd*; SKJ).⁵ To qualify for registration, child welfare investigators have to comply with a combination of educational requirements and requirements with regard to experience and reflection.⁶ Professionals may be obliged to follow extra trainings or education, dependent on their qualifications and experience. Professionals who are registered with the SKJ commit themselves to the Professional Code and may be held accountable for compliance with the Professional Code within the framework of the SKJ's Disciplinary Code. The SKJ ensures that those professionals who are registered are subject to the SKJ's Disciplinary Code.⁷ One of the aims of the Disciplinary Code is that the actions of registered professionals may be subject to assessment, which can improve the individual professional's practices and those of the profession as a whole. Clients or others who claim that a professional did not comply with ethical norms such as laid down in the Professional Code may file a complaint. Disciplinary procedures with regard to youth and family professionals are managed by independent committees.

In April 2018, the minister of Health, Welfare and Sport and the minister for Legal Protection sent the action program 'Care for Youth' (*Zorg voor de Jeugd*) to the House of Representatives.⁸ This action program aims to stimulate adherence by professionals to a number of basic values: respect, concern and transparency. It focuses among other things on the importance of well-motivated decisions and good cooperation and collaboration between parents, child(ren) and professionals. The 'Action Plan Improvement Fact-Finding' (*Actieplan Verbetering Feitenonderzoek*) in the child protection chain is an implementation of this program.

For the judiciary, training on human rights is part of the educational framework. The Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging*; SSR) provides lifelong education for judges and other court officers, aiming to enhance their expertise in the realm of human rights. The Training and Study Centre provides specialized courses and trainings on human rights and offers a special module on combating discrimination. This module is developed and executed by the National Centre of Expertise on Discrimination (*Landelijk Expertise Centrum Discriminatie*; LECD-OM) and contributes to the understanding and prevention of discrimination.

The government would like to explain that the data requested by the Working Group of Experts and Special Rapporteur are not available within the Dutch Child Care and Protection Board. The

⁵ See for more information (in Dutch) <https://skjeugd.nl/>.

⁶ Ibid.

⁷ See <https://skjeugd.nl/wp-content/uploads/2019/03/Tuchtreglement-versie-1.3-4-mrt-2019.pdf>.

⁸ Bijlage bij Kamerbrief over Programma Zorg voor de Jeugd.

Board does not register cases on the basis of ethnicity or nationality, because every child has the right to equal treatment, every case needs to be approached on a case-by-case basis and registration of ethnicity or nationality may stigmatize. Ethnicity may be of relevance in an investigation in the way described above, but is not registered for the above mentioned reasons.

However, general data concerning child protection differentiating between background is published by Statistics Netherlands (*Centraal Bureau voor de Statistiek*; CBS). This general data concerning child protection differentiates between migration and non-migration background, followed by the differentiation between western or non-western.⁹ The most recent data show that during the first six months of 2018, the amount of people who received some form of child care or child protection was approximately 350,000. Approximately 35,000 children received mandatory assistance. Of those 35,000, more than 23,000 did not have a migration background (i.e. both parents were born in the Netherlands), and approximately 12,000 did have a migration background (i.e. at least one parent was born outside of the Netherlands). Of the 12,000 people with a migration background, between 8,000 and 9,000 were people with a non-western migration background.

In the letter of 15 February 2019 the Working Group of Experts and the Special Rapporteur refer to information from which it seemingly appears “that parents of African descent are more likely to be reported, deprived of their children within the Dutch child protection system”, “that (white) Dutch families have greater access to their children, routine visitation, no language restrictions and that the police are not routinely deployed in courts or meetings” and “that white Dutch families receive services to promote reunification more frequently and that the child protection system makes better efforts to reunify these families.” The Government is puzzled by these findings, especially since it has not found indications of any systemic (racial) discrimination in the Dutch child protection system. The Government urges the Working Group of Experts or the Special Rapporteur to produce the information referred to so as to give the opportunity to adequately respond to it.

Finally, in its submissions of 25 October 2018, the Government did not go into details of the individual case, with a view to the children’s privacy. Because of the legal restrictions on sharing details about individual cases with the Working Group of Experts and the Special Rapporteur, flowing from the European Union General Data Protection Regulation,¹⁰ the Government cannot address aspects of the individual case in the present submission. The Government would, however, invite the Working Group of Experts and Special Rapporteur to enter into a confidential dialogue with the Government to explain the case in more detail and to address their general concerns. To be able to give more information about the individual case, the European General Data Protection Regulation¹¹ requires the Government to obtain the parents’ consent. Because of the Working Group of Experts and Special Rapporteur’s confidentiality policy with regard to the party that submitted this case, the Government would request the Working Group of Experts and

⁹ See CBS StatLine, ‘Jongeren met jeugdzorg; persoonskenmerken, volume’, 31 October 2018, <https://jmopendata.cbs.nl/#/JM/nl/dataset/20247NED/table?ts=1554283655353>.

¹⁰ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

¹¹ Ibid.

Special Rapporteur to ask (via the party that submitted the case) the parents for their consent to discuss this case in a confidential dialogue. The Government requests the Working Group of Experts and Special Rapporteur to keep this communication unpublished until that dialogue has taken place.