

1 Introduction

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Children's rights: implementation and monitoring

The monitoring of children's rights is an essential element of the obligation of States Parties to the United Nations Convention on the Rights of the Child (CRC) to implement the rights of the child. Article 4 of the CRC provides that "[S]tates Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the [CRC]". As pointed out by Ann Skelton in this volume, it is the "vision of the Convention" that "a child-friendly State has policies, laws, programmes and budgets geared towards the realization of children's rights" and that monitoring is "important to measure their effectiveness". Monitoring should be a "continuous process" involving "data collections, and analysis and the development of indicators, making children visible in budget, training and capacity-building for all those involved in the implementation process".¹ In its General Comment No. 5 on the general measures of implementation, the UN Committee on the Rights of the Child (the CRC Committee) elaborates on the significance of monitoring, which requires a comprehensive process "built into government at all levels and as early as possible in the development of policy".² The Committee underscores

¹ See Ann Skelton in this volume (chapter 2).

² UN Committee on the Rights of the Child, *General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, para 45.

that “[s]elf-monitoring and evaluation is an obligation for Governments”, but also “regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions”.³

New, bi-annual academic series on monitoring in the Netherlands

This book is the first volume of a new, bi-annual academic series on the monitoring of children’s rights specifically in the Kingdom of the Netherlands. The series aims to provide insight into the state of children in the Netherlands, the implementation of children’s rights as laid down in the CRC and developments in this regard over the years. It is also meant to serve as a source of information for the development of policies and legislation, societal and political debate and for further scientific research, including research on the monitoring of children’s rights. This series builds on the Children’s Rights Monitor (*Kinderrechtenmonitor*), which was developed by the Department of Child Law of Leiden University for the Dutch Children’s Ombudsperson,⁴ but which was discontinued after 2016. It is different, however, in terms of its design, content and purpose. While the Children’s Rights Monitor fell within the mandate of the Children’s Ombudsperson under the Act on the Children’s Ombudsman (*Wet Kinderombudsman*) to monitor the rights of children in the Netherlands, including the Caribbean Netherlands (i.e. Bonaire, Sint Eustatius and Saba), this series offers scholarly publications which primarily serve the purpose of making a scientific contribution to the academic field of children’s rights and the understanding of children’s rights implementation and monitoring in the Netherlands.

In light of this, the volumes within this series consist of different components. The core component is a report on the rights of children in the Kingdom of the Netherlands, which presents key facts and figures relating to children on the basis of information provided by Francis van

3 General Comment No. 5, para. 46. See also UN Committee on the Rights of the Child, General Comment No. 2: *The role of independent national human rights institutions in the promotion and protection of the rights of the child*, 15 November 2002, CRC/GC/2002/2 and UN Committee on the Rights of the Child, General Comment No. 19 (2016) *on public budgeting for the realization of children’s rights (art. 4)*, 20 July 2016, CRC/C/GC/19.

4 See the latest version of the Children’s Rights Monitor: *De Kinderombudsman, Kinderrechtenmonitor 2016* (The Hague: De Kinderombudsman, 2016). See also Mariëlle Bruning, Maria de Jong-de Kruijff and Kartica van der Zon, *Voorstudie Kinderrechtenmonitor in opdracht van de Nederlandse Kinderombudsman* (Leiden: The Department of Child Law of Leiden University, 2011).

der Moeren of Statistics Netherlands (*Centraal Bureau voor de Statistiek, CBS*), followed by an analysis of a number of cross-cutting themes under which a variety of relevant children's rights issues are presented and analysed. This report will close with a set of concluding observations on the implementation and monitoring of children's rights in the Netherlands. In addition, each volume enshrines one or more in-depth studies on a specific children's rights theme or issue that is relevant from both an international and national children's rights perspective and these have been prepared (and peer-reviewed) by leading academics in their respective fields. Each volume will start with an editorial by the editors or an external expert. The monitor shows the current state of affairs in the field of children's living environment and their rights, including any (imminent) legislative changes, jurisprudence and policy developments. All this is assessed in light of the CRC, and points of attention are formulated for the implementation of the CRC in the future. Where relevant, the series reflects on the further development of monitoring of children's rights in the Kingdom of the Netherlands.

Although the series primarily serves as a scholarly contribution which resonates with the growing attention within academia to international children's rights as a field and in terms of their impact at the domestic level,⁵ it also aims to make a contribution to the implementation of children's rights by shedding light on the responsibilities of state and non-state actors. In doing so, this new series should be seen as an academic add-on to already existing scientific monitors on children's matters⁶ and to the important work of the Children's Ombudsperson and non-governmental organisations working on children's rights,⁷ also in relation to the reporting procedure under the CRC.⁸ It can also be used for teaching purposes. The language of the series is English which contributes to the series' accessibility for readers and users throughout the Kingdom of the Netherlands as well as for academics and students

5 Ursula Kilkelly and Ton Liefwaard, "International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law", in *International Human Rights of Children*, eds. Ursula Kilkelly and Ton Liefwaard (Singapore: Springer, 2019) 617.

6 See e.g. the Jeugdmonitor of Statistics Netherlands (<http://jeugdmonitor.cbs.nl/>), which includes information on the Caribbean Netherlands; see also the report of Health Behaviour in School-aged Children (HBSC): Gonneke Stevens, Saskia van Dorsselaer, Maartje Boer, et al., *HBSC 2017 – Gezondheid en welzijn van jongeren in Nederland* (Universiteit Utrecht: Utrecht, 2018) and the KidsRights Index developed by the KidsRights Foundation and the Erasmus University (<https://www.kidsrightsindex.org>).

7 See in particular Dutch NGO Coalition for Children's Rights.

8 See the recent Dutch NGO Coalition for Children's Rights, *Children's Rights in The Netherlands. Input to the List of Issues of the UN Committee on the Rights of the Child* (Leiden, 2019). See also the annual *Jaarbericht Kinderrechten* published by UNICEF The Netherlands and Defence for Children.

from outside. Both academia dealing with international children's rights and policy makers are in need of more exchange of information on the implementation of children's rights at the domestic level and challenges in this regard.⁹

Methodology and time frame

The research method is desk research of legal, statistical and other academic and non-academic sources, including reports of the Dutch Children's Ombudsperson, NGO reports, UN documents (including the CRC Committee's General Comments in which the committee provides recommendations on the implementation of children's rights in specific matters) and policy papers. The series' report on the rights of children in the Kingdom of the Netherlands is based on statistical information from CBS *StatLine*.¹⁰ In addition, other public sources, including academic literature, jurisprudence, annual reports, NGO reports and grey literature, have been consulted. The children's rights analyses are mainly based on legal sources, including the texts of international and regional legal documents (conventions, resolutions and general comments, among others) and international, regional and domestic case law. The subjects in the cross-cutting themes are dynamic and can be changed in the future. Due to the fixed system of data collection and the periodicity of the monitor research, knowledge accumulation takes place. The report also creates a picture of longer-term developments, and suggestions for changes in the future can be made based on past experiences. The series focuses on children's rights within the Kingdom of the Netherlands, which aims to include the four countries, the Netherlands, Aruba, Curaçao and Sint-Maarten, as well as the Caribbean Netherlands, that is: Bonaire, Sint Eustatius and Saba.¹¹ It should, however, be acknowledged that (current) information on children and children's rights in the Caribbean parts of the Netherlands is still limited compared to the European part.

9 Kilkelly and Liefwaard, "International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law," in *International Human Rights of Children*, eds. Ursula Kilkelly and Ton Liefwaard (Singapore: Springer, 2019) 617. See also Laura Lundy, Ursula Kilkelly, Bronagh Byrne and Jason Kang, *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries* (Belfast: The Centre for Children's Rights at Queen's University Belfast, in collaboration with UNICEF UK, 2011).

10 See <https://opendata.cbs.nl/statline/#/CBS/nl/>.

11 When the series talks of the Caribbean parts of the Netherlands it means Aruba, Curaçao, Sint Maarten as well as the Caribbean Netherlands (i.e. Bonaire, Saba and Sint Eustatius).

Consequently, this first volume will not provide much information on the Caribbean parts of the Netherlands.¹²

Unlike the Children's Rights Monitor, this series could not benefit from the Children's Ombudsperson's direct access – through specific requests on the basis of the mandate under the Children's Ombudsman Act – to information contained within the government which is not publicly available. Therefore, this series will primarily deal with documents that are available through public sources. It is not intended to consult children directly but, where available, the information about consultations with children will be included.¹³ Moreover, the future in-depth studies may also include empirical research methods which could include research with children as respondents. In these cases, the invited researchers will be asked for ethical approval and a data management plan.

As far as the first volume of the series is concerned, sources with information on the years 2016, 2017 and 2018 have been included. This has enabled the series to start after the last Children's Rights Monitor, which presented information up until 2016. The next volume aims to cover the years 2019 and 2020 and will be published in 2021. The in-depth studies are not limited to a specific time frame since they do not form part of the core of the monitor. They provide a further deepening of topical and more complex matters of children's rights. Themes may recur after some time, which enables authors to reflect on recent developments and compare them to the previous studies under the same theme.

The editors of the series, who have extensive experience in the field of children's rights and children's rights monitoring and together form a multidisciplinary team, have consulted an advisory board set up for this series consisting of renowned academics from different academic backgrounds, including law and social sciences (pedagogics and child psychology).¹⁴ The advisory board has been and will in the future be consulted on the development of the series as well as on the selection of the cross-cutting themes of the monitor and of the in-depth studies.

¹² If so, the information is limited to the Caribbean Netherlands. At the time of writing, UNICEF was conducting Situation Analyses in Sint-Maarten and the Caribbean Netherlands. It is expected that these analyses will be useful for the next volume in this series. See UNICEF, *Situations Analysis Children and Adolescents in the Caribbean Netherlands* (The Hague: UNICEF The Netherlands, 2019).

¹³ In this regard it is important to point out the approach taken by the current Children's Ombudsperson who actively involves children in the determination of the priorities in her work: see www.dekinderombudsman.nl.

¹⁴ See *Acknowledgements* for an overview of the members of the advisory board.

First volume – 30 Years of the UN Convention on the Rights of the Child

This first volume of the series pays tribute to the 30th Anniversary of the CRC in November 2019. The Netherlands ratified the CRC in 1995 and two of the Optional Protocols¹⁵ in 2002 and 2009 respectively. The CRC entered into force in the Netherlands Antilles (Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba) on 16 January 1998 and in Aruba on 17 January 2001.¹⁶ It is inevitable that the CRC has contributed – in different ways – to more awareness and activities around children's rights and their significance for children's well-being and development. The CRC has confirmed that children ought to be seen as rights-holders entitled to be treated with humanity, with respect for human dignity and in a non-discriminatory manner. The CRC and related international and regional standards and case law also show that children are entitled to be recognised as human beings in development whose best interests serve as a primary consideration in all actions concerning them (Article 3 (1) CRC), for whom parents and other caretakers, including the (extended) family, bear special responsibilities and whose evolving capacities must be recognised as coinciding with rights related to self-determination and (evolving) autonomy (Article 5 CRC).¹⁷

For the Kingdom of the Netherlands, the CRC as well as the two substantive Optional Protocols have direct legal relevance because of the Dutch (quasi-)monistic legal system, which finds its basis in Articles 93 and 94 of the Constitution. This has among others resulted in legislative reform on specific themes, including for example the establishment of the Children's Ombudsperson in the Netherlands (including the Caribbean Netherlands) and Aruba, and the prohibition on using violence in the home in the European part of the Netherlands (see e.g. Article 1:247 Dutch Civil Code). In addition, there is an increasing use of the CRC

15 The Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002. The Netherlands has neither signed nor ratified the (3rd) Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

16 On 10 October 2010, the Netherlands Antilles ceased to exist; Curaçao and Sint Maarten became two separate countries within the Kingdom, like Aruba and the Netherlands. Bonaire, Saba and Sint Eustatius have become special communities of the Netherlands. The four countries have all reported to the Committee on the Rights of the Child and the CRC Committee issued its last concluding observations to the Kingdom of the Netherlands in June 2015: UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of the Netherlands*. UN Doc. CRC/C/NDL/CO/4 (2015).

17 See Sheila Varadan, "The Principle of Evolving Capacities under the UN Convention on the Rights of the Child", *The International Journal of Children's Rights* 27 (2019): 306-338.

in judicial proceedings concerning children, ranging from family law and child protection proceedings to criminal justice and administrative proceedings, including immigration procedures.¹⁸ While this series primarily looks at the CRC and its Optional Protocols, it is important to underscore that the Netherlands has ratified general and other special human rights treaties that are relevant to children's rights, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and the European Convention on Human Rights (ECHR). The last has proven to be particularly relevant, including for the Caribbean parts of the Netherlands, since the European Court of Human Rights has started to develop jurisprudence around matters of children's rights, which have increasingly been informed by international children's rights standards, including the CRC and the General Comments of the CRC Committee, as well instruments around children's rights from the Council of Europe.¹⁹ Where relevant, the series will reflect on the implications of these different sources of international and European children's rights law, which also includes European Union (EU) legislation and case law of the European Court of Justice.

Outline of the first volume

This volume starts with an editorial by Ann Skelton, a member of the UN Committee on the Rights of the Child, under the title "New Frontiers in the Monitoring of Children's Rights". The editorial is followed by a report on the rights of children in the Netherlands in the years 2016, 2017 and 2018. The third part of this volume includes an in-depth study prepared by Simone van der Hof, Eva Lievens and Ingrida Milkaite on the new European General Data Protection Regulation (GDPR), applicable since May 2018. This special study deals with an important aspect of the broader theme of children's rights and digital technologies, and relates to

¹⁸ Ton Liefwaard and Jaap Doek, "Kinderrechten in de rechtspraak, een internationaal perspectief", *Tijdschrift voor Familie- en Jeugdrecht* 12 (2015): 82-87. See also Manuela Limbeek and Mariëlle Bruning, "Two Decades of the CRC in Dutch Case Law", in *Litigating the Rights of the Child. The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, eds. Ton Liefwaard and Jaap Doek (Dordrecht: Springer, 2015): 89.

¹⁹ See European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to the rights of the child* (Luxembourg: Publications Office of the European Union, 2017).

recent EU legislation which had to be incorporated into the Dutch legal system and revolves around the protection of children's right to privacy in the offline and online environment, as laid down in Article 16 of the CRC.

To conclude

The past 30 years have shown that the CRC has had an increasing impact on domestic jurisdictions, including the Netherlands, in a wide variety of ways: through legislation, policies, NGO activities and monitoring.²⁰ This series aims to capture that development and, in doing so, to make a contribution to the furthering of the understanding of the dynamic around children's rights' implementation and monitoring, with a particular focus on the Netherlands. As Ann Skelton observes in the volume's editorial, "[m]onitoring the protection and promotion of children's rights is evolving, as it must, to keep up with the changing lived realities of children's lives". This is why this particularly series will also continue to evolve, on a step-by-step basis. The editors welcome comments and suggestions to develop the series further and for in-depth studies, as part of a joint responsibility to monitor the rights of all children in the Kingdom of the Netherlands effectively.

20 Kilkelly and Liefwaard, "International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law", in *International Human Rights of Children*, eds. Ursula Kilkelly and Ton Liefwaard (Singapore: Springer, 2019) 617.