

ACCESS TO JUSTICE FOR CHILDREN: COUNTRY REPORT

CARD¹

NETHERLANDS

I. Legal Status of the Convention on the Rights of the Child (CRC)	
A. CRC takes precedence over conflicting legislation (/10) (no = 0; partial = 5; yes = 10)	10
B. CRC has been incorporated into national law (/10) (no = 0; partial = 5; yes = 10)	5
C. CRC is directly enforceable in domestic courts (/10) (no = 0; interpretive guidance = 3; some direct, some interpretive guidance = 6; yes = 10)	6
D. CRC has been applied in legal proceedings (/10) (no = 0; not systematically = 5; systematically = 10)	10
E. OP3 is ratified (/5) (no = 0; yes = 5)	0
SCORE /45:	31

II. Legal Status of the Child	
A. Full range of legal claims is available to challenge rights violations (/20)	
Specific standards: (2.5 each)	
• violations can be challenged even if they are not crimes	2.5
• can bring private prosecutions where the State will not carry out a criminal prosecution itself	0 ²
• can challenge deprivation of liberty and/or lawfulness of detention	2.5 ³
• mechanisms exist to investigate allegations against officials	2.5
Independent bodies capable of taking complaints before or on behalf of children: (2 each)	
• Independent institution exists with mandate that covers the protection and promotion of children's rights	2
• There is a specific department or person within the relevant institution that specifically deals with children's rights	2
• Institution is empowered to bring complaints in relation to violations of children's rights	2
• Institution has a transparent appointment procedure	2

¹ This report card is based on CRIN's Legal Status of the Child: Model Report, available at www.crin.org/en/node/31972/.

² Information available at www.euro-justice.com/files/file.php5?id=23.

³ Constitution, Article 15(2).

<ul style="list-style-type: none"> • Institution is empowered to review State's progress in realising children's rights 	2 ⁴
B. Children can bring cases alone or via a representative (/7.5)	
Can bring a case in own name (no = 0; yes = 2.5)	2.5
Is generally not required to bring proceedings through a guardian ad litem or litigation friend (no = 0; yes = 2.5)	0
No conflict of interests in appointments of representatives (no = 0; yes = 2.5)	2.5
C. Parents/guardians can bring cases on behalf of very young children (/10)	
Parents' ability to act on behalf of child is tempered by the principle of the best interests of the child (no = 0; partial = 5; yes = 10)	5
D. Children/representatives are eligible for free legal assistance (/30)	
Settings: (2 each)	
<ul style="list-style-type: none"> • civil 	2
<ul style="list-style-type: none"> • criminal 	2
<ul style="list-style-type: none"> • administrative 	2
<ul style="list-style-type: none"> • family 	2
<ul style="list-style-type: none"> • all other judicial settings 	0
Right to a lawyer of own choosing (no = 0; yes = 5)	0
Right to lawyer with experience commensurate with nature of claim / offence (no = 0; yes = 5)	0
Right to legal aid throughout the criminal process from arrest to trial and appeal (no = 0; partial = 5; yes = 10)	5
E. No further legal limitations/conditions on children/representatives bringing, running or settling cases (/5) (deduct 1 for each limitation/condition)	5 ⁵
SCORE /72.5:	45.5

III. Challenging Children's Rights Violations	
A. Children have complete access to all courts, complaints mechanisms (/10)	
Settings: (2.5 each)	
<ul style="list-style-type: none"> • criminal 	2.5
<ul style="list-style-type: none"> • civil 	2.5
<ul style="list-style-type: none"> • administrative 	2.5
<ul style="list-style-type: none"> • informal, customary or alternative justice mechanisms available where appropriate 	2.5
B. Courts have broad powers to remedy rights violations (/16)	
Remedies: (2 each)	
<ul style="list-style-type: none"> • restitution 	2

⁴ The Children's Ombudsman has set up an independent Children's Rights Monitor, which measures progress made by the Netherlands in the field of children's rights. See *Fourth Periodic Report of the Kingdom of the Netherlands*, available at:

<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2013/11/25/fourth-periodic-report-of-the-kingdom-of-the-netherlands/fourth-periodic-report-of-the-kingdom-of-the-netherlands.pdf>

⁵ Consent of the child's legal representative (usually their parent or guardian) is required to bring a case.

• compensation	2
• stop the enforcement of a law	2 ⁶
• stop the enforcement of subsidiary legislation	2
• order government to take steps to prevent a violation	2
• launch investigation OR bring proceedings at the court's initiative	0
• guarantee non-repetition	2
• repeal of law (partial = 1)	0 ⁷
C. Widespread violations can be challenged without naming individual victims (/10)	
Named victims are not required (no = 0; partial = 5; yes = 10)	0
D. Children can file group litigation to challenge multiple violations (/10)	
Group and collective litigation available (no = 0; partial (selected types of actions only) = 2.5; yes = 7.5)	7.5
Courts have the power to combine cases to offer clear, consistent pronouncements of the law (no = 0; yes = 2.5)	2.5
E. Non-governmental organisations can file, intervene in cases (/10)	
Can file (no = 0; yes = 7.5)	7.5
Can intervene (no = 0; yes = 2.5)	2.5
SCORE /56:	42

IV. Practical Considerations	
A. Venue (/5)	
Formal restrictions relaxed as necessary and appropriate (no = 0; partial = 2.5; yes = 5)	2.5 ⁸
B. Legal aid / costs (/5)	
Court fees and case related expenses are not payable (no = 0; yes = 5)	5
C. Pro-bono / financing (/10)	
Active legal and bar associations that offer pro-bono representation (no = 0; yes = 5)	5
Systematic procedures to promote pro-bono (no = 0; yes = 5)	5 ⁹
D. Timing (/10)	
Limitation periods do not begin to run until a child reaches the age of 18 (no = 0; yes = 5)	5 ¹⁰
No time limitation period for "serious violations of international humanitarian law" (no = 0; yes = 5)	5

⁶ The Supreme Court can in principle rule that provisions of Dutch law are invalid because they contravene any part of the CRC that sets a clear standard without requiring further elaboration in national law

⁷ The constitutionality of Acts of Parliament cannot be reviewed by the courts: see Constitution, Article 120.

⁸ Juvenile courts exist.

⁹ The Dutch government subsidises legal assistance provided to indigents by attorneys in private practice.

¹⁰ In the case of sexual offences committed against children, the period of limitation starts to run only when the victim reaches the age of 18, and not when the offence was committed: see Initial Report by the Netherlands to the UN Committee on the Rights of the Child, CRC/C/51/Add.1, 24 July 1997, para. 377.

E. Evidence (/7.5)	
Children may testify or give evidence in court proceedings (no = 0; yes = 2.5)	2.5
Opportunity to give evidence not under oath where this is not understood (no = 0; yes = 2.5)	2.5
Child friendly procedures to facilitate the giving of evidence (no = 0; yes = 2.5)	2.5 ¹¹
F. Resolution (/10)	
Cases involving children are resolved without undue delay (no = 0; partial = 5; yes = 10)	10
G. Appeal (/10)	
Children have right to appeal (no = 0; partial = 5; yes = 10)	10
H. Impact and follow-up (/10)	
Judicial decisions are enforced and respected (no = 0; partial = 5; yes = 10)	10
I. Privacy (/10)	
Privacy of children involved in legal proceedings guaranteed by law; public can be excluded; personal details unpublished (no = 0; yes = 10)	10
J. Right to be heard (/10)	
Explicit provisions in place to guarantee children's right to be heard and for his or her views to be taken into account during legal proceedings (no = 0; partial = 5; yes = 10)	5 ¹²
SCORE /87.5:	80

TOTAL WEIGHTED SCORE /261 = 198.5

¹¹ See EC study:

http://bookshop.europa.eu/en/study-on-children-s-involvement-in-judicial-proceedings-pbDS0313678/?CatalogCategoryID=Yimep2Ow3YgAAAF0IQYi8_Kq.

¹² Direct access to a judge available in certain cases only (e.g. criminal, family):

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNLD%2f4&Lang=en; right to be heard in civil cases.