

## Submission for the planned visit of UN Special Rapporteur on the Right to Adequate Housing to the Kingdom of Netherlands

Updated version of 13 October 2023

### 1. Introduction

With this submission, Defence for Children Netherlands responds to the call for input in preparation of the visit of the UN Special Rapporteur on the Right to Adequate Housing, Mr. Balakrishnan Rajagopal, to the Kingdom of the Netherlands, rescheduled for December 2023. Defence for Children welcomes this visit by the Special Rapporteur and is available to expand on this submission in person during the Special Rapporteur's visit to the Netherlands in person.

### 2. Homeless children and young people in the Netherlands

The number of homeless young persons (aged 18-30) has tripled between 2009 and 2018, amounting to 12,600 homeless young adults in 2018.<sup>1</sup> About 60 percent of homeless young people have received youth care previously in their lives.<sup>2</sup> This includes young people who can no longer depend on youth care because they have reached the age of 18.<sup>3</sup> It indicates that there is insufficient and inadequate after care for young people when they leave youth care. This is also confirmed by a study from 2019 that indicates that young people in residential youth care are insufficiently prepared for independent life.<sup>4</sup>

In October 2023, a count of homeless persons by civil society in a number of municipalities found that more children and women are amongst homeless persons than previously expected: a quarter. This became national news.<sup>5</sup> Fifty other municipalities indicated that they too want to deploy this new method of counting, as this provides more accurate numbers. Before, the number of homeless persons was estimated by the number of persons receiving welfare in shelters, excluding the largest group of homeless persons: those staying at friends, family or elsewhere, instead of in a shelter.

**Proposed recommendation:** Defence for Children Netherlands urges the Special Rapporteur to recommend youth care institutions to prepare children early for a life beyond youth care, and for the government to extend youth care beyond 18 where necessary. Moreover, it is advisable to gather a better insight into the number of homeless children and their situation.

### 3. Housing Availability and Affordability

Access to shelter is regulated in the Social Support Act 2015.<sup>6</sup> Homelessness for economic reasons alone is not included as a ground, due to which affected families are not eligible for shelter. The government considers these families as self-reliant. People are only eligible for shelter if in addition to economic reasons they have specific care needs, such as addiction or mental health problems. However, not all families without specific care needs manage to find accommodation themselves, for instance due to a housing shortage and high rents.<sup>7</sup> At the children's rights helpdesk of Defence for Children Netherlands, we receive calls among others from parents with children who have become homeless or are at risk of becoming homeless following a divorce or an eviction due to the inability to pay rent.

Some municipalities find creative ways to help families with children find shelter, but a standard policy is lacking, and municipalities indicate that they are unable to resolve this problem on their own.<sup>8</sup> If

<sup>1</sup> Central Bureau of Statistics (2019) <https://www.cbs.nl/nl-nl/nieuws/2019/34/aantal-daklozen-sinds-2009-meer-dan-verdubbeldhttps://www.cbs.nl/nl-nl/nieuws/2019/34/aantal-daklozen-sinds-2009-meer-dan-verdubbeld>

<sup>2</sup> Council for Public Health and Society (2020) [Herstel begint bij een huis. Dakloosheid voorkomen en verminderen](https://www.councilforpublichealth.nl/Herstel-begint-bij-een-huis-Dakloosheid-voorkomen-en-verminderen)

<sup>3</sup> Impuls and IVO (2015) [Dakloze mensen in de vier grote steden: veranderingen in 2.5 jaar](https://www.impuls.nl/Dakloze-mensen-in-de-vier-grote-steden-veranderingen-in-2.5-jaar)

<sup>4</sup> Hanzon, C., en Veluw, N. van (2019) [Leren van herhaald beroep in de JeugdzorgPlus](https://www.jugdzorgplus.nl/Leren-van-herhaald-beroep-in-de-JeugdzorgPlus)

<sup>5</sup> <https://nos.nl/artikel/2492961-nieuwe-telling-dak-en-thuislozen-meer-kinderen-en-vrouwen-dan-vaak-gedacht>

<sup>6</sup> Social Support Act (2015), available in Dutch: <https://wetten.overheid.nl/BWBR0035362/2022-05-01>

<sup>7</sup> National Ombudsman (05-06-2020) [Nationale ombudsman en Kinderombudsman: vasthouden regie kabinet op dak- en thuislozenproblematiek nu essentieel](https://www.ombudsman.nl/Nationale-ombudsman-en-Kinderombudsman-vasthouden-regie-kabinet-op-dak-en-thuislozenproblematiek-nu-essentieel) and (29-03-2019) [Steeds verder van huis: zeven obstakels waar zelfredzame adreslozen tegenaan lopen](https://www.ombudsman.nl/Steeds-verder-van-huis-zeven-obstakels-waar-zelfredzame-adreslozen-tegenaan-lopen)

<sup>8</sup> Council of Public Health & Society (2020) [Herstel begint met een huis en de reactie van de minister hierop](https://www.councilforpublichealth.nl/Herstel-begint-met-een-huis-en-de-reactie-van-de-minister-hierop)

municipalities do not offer shelter to homeless families (or families at risk of becoming homeless), these families must arrange housing via their own network. However, they do not always have a network, or their network is exhausted.

If the family ends up living on the streets or if this scenario seems likely, they may be threatened with or experience an out-of-home placement of their children. A catch-22 is the result: parents who are at risk of becoming homeless solely for economic reasons are still believed to be self-reliant and therefore do not meet the criteria for accessing shelter. At the same time, they are not considered able to care for their children and therefore (at threat of becoming) separated from them. According to the UN Committee on the Rights of the Child, poverty can never be the sole reason for separating parents and children.<sup>9</sup> A court in Rotterdam argued in 2018 that homeless individuals who are considered self-reliant fall between a rock and a hard place because the law does not provide for access to shelter for them, and stressed that this requires a political solution.<sup>10</sup> This has not yet been provided to date.

A relatively new group that faces this problem is repatriates: Dutch people returning to the Netherlands from abroad who are unable to find housing and therefore become homeless. This group does not fall within the ambit of the Social Support Act 2015 either.<sup>11</sup> Also a group that is increasingly seen are the EU citizens. Due to their status they may settle, reside and work within any EU country, but are considered responsible for housing themselves and cannot claim social support act services and public funds in the first 5 years of their stay.

### Proposed recommendations

1. To the government: to create a separate shelter regulation for families who are homeless for economic reasons or abolish the self-reliance criteria.
2. To the Ministry of Housing, Spatial Planning and the Environment: to create a national distribution point for repatriates with children in need of housing, including EU-citizens with children.
3. To the government and legislature: to prohibit out-of-home placement of children based on economic homelessness by amending the Social Services Act.
4. To the Ministry of Housing, Spatial Planning and the Environment: to create more opportunities for families to leave shelters by solving the housing shortage and ensure the availability of enough child-friendly accommodation.

### 4. Habitability: The right to water

As explained by the UN Committee on Economic Social and Cultural Rights in General Comment No. 4 on the Right to Adequate Housing, “An adequate house must contain certain facilities essential for health, security, comfort and nutrition”, including safe drinking water.<sup>12</sup> In the Netherlands, this right to water is not guaranteed, especially for children. Families with children can be disconnected from water when their parents are unable to pay the water bills. This violates human and children’s rights.

As the Dutch Central Government and water companies have refused to halt this practice, Defence for Children Netherlands in collaboration with the Dutch section of the International Commission of Jurists) and supported by the Brauw (international law firm) have initiated a (class action) lawsuit on behalf of all children residing in the Netherlands against the Dutch government and two water companies with the purpose to halt this practice and prohibit the government and water companies from disconnecting families with children from water. Unfortunately, in April 2022 the court has ruled that it is not necessarily a violation of their fundamental rights when families with children are disconnected from water when the parents are unable to pay the water bills. According to the court ruling, children do have the right to access to safe drinking water in line with the UN CRC and the European Convention on Human Rights, but that this right is not absolute.<sup>13</sup> Defence for Children Netherlands went into appeal

<sup>9</sup> Ombudsman for Children (2020) [Ongehoord! De onzichtbaarheid van kinderen bij huisvestingsproblemen and Ombudsman for Children \(2020\) Handreiking het beste besluit voor het kind bij huisvestingsproblemen](#)

<sup>10</sup> Court ruling, Rotterdam, 4 december 2018, ECLI:NL:RBROT:2018:9906.

<sup>11</sup> Bureau HHM (2020) [Zelfredzame remigranten gezinnen en de reactie van de minister hierop](#)

<sup>12</sup> UN Committee on Economic Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, 1991, par. 8.

<sup>13</sup> Court ruling (06-04-2022): <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2022:3043>

to secure the right to safe drinking water for children in the Netherlands. The court scheduled this case for December 2023.

**Proposed recommendation:** Defence for Children Netherlands calls upon the Special Rapporteur to recommend the Government of the Kingdom of the Netherlands to halt the practice of disconnecting families with children from water and prohibit water companies from doing the same.

## 5. Protection from discrimination in housing: children with a migration background

The Central Agency for the Reception of Asylum Seekers ('COA') is responsible for the reception of asylum seekers and collaborates with municipalities, for example when a new reception center is opened in a municipality. Asylum seekers reside in the Asylum Seekers' Centres when they have an on-going procedure. When an asylum seeker obtains a residence permit, he/she becomes a 'status holder'. Municipalities have the duty to provide suitable housing for status holders. Asylum seekers with children who have exhausted their legal remedies and have no right to stay in the Netherlands will be transferred to the Family Locations.

### *Shelter in an Asylum Seekers' Centre*

In 2022 there was a huge reception crisis resulting in shortage of reception places in the reception centre Ter Apel. This led to appalling conditions. People sleeping on chairs or on the floor due to the lack of beds were no exception: "Children, adults, men and women sleep together in flapping tents. There is no privacy whatsoever and access to medical and psychosocial care is very limited," according to a news report.<sup>14</sup> This situation has not improved in 2023 and the situation in the reception centre in Ter Apel still remains precarious. Not only is there still a threat of an acute shortage of beds for unaccompanied children in Ter Apel and other places, the crisis has moved from grass fields to (crisis) emergency shelter ('Crisis noodopvang') in many locations.<sup>15</sup> According to the latest figures from COA of September, 2023, 3,969 asylum seekers are currently staying in emergency reception locations, including 1,844 children traveling alone. In addition, it is estimated that there are around a thousand children in the crisis emergency shelter. According to the ombudsman National and Children's ombudsman the situation in these crisis emergency shelters is below the standards of basis human dignity due to lack of privacy, no access to education and frequent relocation of children and their families, sometimes even resulting in children who deprive themselves of food in order to regain some control about their personal situation.<sup>16</sup>

No fewer than four Inspections warned in May 2023 that the development of children in crisis emergency shelters is at risk.<sup>17</sup> Children stay several months in temporary locations and the many moves are particularly harmful. In addition, there is no guarantee of access to education (some children have not been to school for a year), and a lack insight into the individual health situation and continuity of care for children.

The Dutch Council for Refugees recently concluded in a study that the conditions in (crisis) emergency shelter are still seriously inadequate:<sup>18</sup> In half of the visited shelters, sleeping areas do not offer peace and privacy. In such shelters in old buildings (7), such as office buildings, ten, twenty or sometimes even a hundred residents sleep in the same room. In sports and event halls (5) there are no separate rooms at all or they consist of temporary partitions without ceilings. In large-scale (crisis) emergency shelters (3) the sanitary facilities are inadequate and equipped with temporary emergency toilets and showers (6). These facilities are of poor quality and often ill- or not functioning. In fourteen (crisis) emergency shelters, the hygiene of the sanitary facilities is substandard, especially because sometimes up to a hundred people have to use a small number of toilets and showers. The majority of the (crisis) emergency shelters lack safe play areas (6) and activities (6), making it difficult for parents to provide children with sufficient safety.<sup>19</sup>

The Dutch government has proposed a new bill in order to address this structural shortage and to legally task municipalities (structurally) with the reception of asylum seekers. The government wants to change the situation that the Central Agency for the Reception of Asylum Seekers (COA) is dependent on the voluntary cooperation of municipalities in realizing asylum reception and achieve a more balanced distribution of asylum seekers among municipalities. This bill was delayed by the fall of the Dutch government in July 2023. However, the House of Representatives has voted to pass this bill

<sup>14</sup> News report 26th March 2022: <https://nos.nl/collectie/13892/artikel/2422742-coa-zet-tegen-de-wens-van-de-gemeente-extra-noodpaviljoen-neer-in-ter-apel>

<sup>15</sup> Report by UNICEF, 20 September 2023.

<sup>16</sup> Report by the National Ombudsman and Children's ombudsman <https://www.nationaleombudsman.nl/professionals/nieuws/nieuwsbericht/2023/waardigheid-volwassenen-en-kinderen-ernstig-onder-druk-in>

<sup>17</sup> <https://www.igi.nl/actueel/nieuws/2023/05/03/inspecties-veiligheid-en-ontwikkeling-kinderen-asielopvang-nog-steeds-in-gevaar>

<sup>18</sup> News report 6 September 2023: <https://eenvandaag.avrotros.nl/item/jaar-na-rechtszaak-ziet-vluchtelingenwerk-dat-situatie-in-crisisnoodopvang-voor-asielzoekers-nog-steeds-belabberd-is/>

<sup>19</sup> The numbers between brackets show the amount of visited locations.

(*Spreidingswet*) on the 3rd of October 2023. At this moment, it is however highly doubtful that the bill will pass the Senate.

#### *Shelter for unaccompanied minors*

Unaccompanied minors are entitled to reception, irrespective of having a residence permit. At the end of 2021, the Netherlands experienced a sharp increased influx of unaccompanied minors. As a result, several minors aged 17 (both status holders and non-permit holders) were transferred to regular reception centre where they were placed between adults. This measure was extended in 2023. In June of 2023, Nidos, the national guardianship institution for unaccompanied and separated children in the Netherlands, has made an urgent appeal to municipalities to provide for more shelters for separated children.<sup>20</sup> There is a shortage of 2,000 additional small-scale shelter places for unaccompanied minors with an asylum status.

Unaccompanied minors without documentation face further problems, as they lack documents substantiating their age. As a result, these children are often excluded from child protection services and are denied adequate housing. They often end up homeless, because access to homeless shelter is difficult as those facilities are already overcrowded or don't accept undocumented migrants.

#### *Refugees with a permit (status holders)*

Asylum seekers who are granted a residence permit are allowed to stay in the reception centre until the Central Agency for the Reception of Asylum Seekers has arranged housing facilities in cooperation with a municipality.<sup>21</sup> The law does not state a maximum period for the stay of beneficiaries in reception centres. The aim of the Dutch government in 2018 was to have a maximum stay of three and a half months in the reception centre after the granting of a residence permit.<sup>22</sup> However, in April 2022 around 13,000 refugees with a permit resided in reception centers.<sup>23</sup> As of March of 2023, these numbers have risen to over 21.000 persons.<sup>24</sup> This group is unable to move to social housing provided by the municipalities, largely due to the current housing shortage in the Netherlands. As a result, this group of status holders occupies asylum seekers' reception places. About a quarter of the total residents is under the age of 18.

#### *Shelter in Family Locations (Return centres)*

Family Locations are specialised asylum seekers' centres, only accessible for migrants with children whose procedure has been closed and who have to leave the Netherlands. This is to avoid that children end up homeless. The problem, however, is that a lot of these families are unable to return to their country of origin, as they are not accepted there. As a result, families end up staying many years without any perspective and children end up growing roots in the Netherlands. The Family Locations are not suitable for long-term stay as they are designed for families to leave the country. A strict regime prevails at these locations whereby families must stay within the municipal boundaries, report six days a week, and the living allowance (€ 31 to € 34 per week) is insufficient to meet the minimum living conditions for a family with children. On top of that, families are regularly fined, for instance when they do not keep the living quarters clean, when a fire alarm goes off or when they don't report on time. Another problem is the frequency of relocation. On average, children move once a year to another location. Research has shown that the frequent relocations result in impaired cognitive and social-emotional development in children.<sup>25</sup>

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<sup>20</sup> Report by Nidos and COA <https://www.nidos.nl/oproep-gemeenten/>

<sup>21</sup> Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

<sup>22</sup> Kamerstuk II, 2017-2018, 34775 VI, No 17.

<sup>23</sup> Ministry of Justice and Security, 8th April 2022: <https://www.rijksoverheid.nl/actueel/nieuws/2022/04/08/komend-halfjaar-voor-13.500-statushouders-huisvesting-nodig>.

<sup>24</sup> Ministry of Justice and Security, 30th September 2022: <https://www.rijksoverheid.nl/actueel/nieuws/2022/09/30/eerste-halfjaar-2023-huisvesting-nodig-voor-21.200-statushouders#:~:text=Daarnaast%20is%20er%20gekeken%20naar,uitstroom%20van%20statushouders%20naar%20gemeenten>.

<sup>25</sup> Nielsen, S. S., Norredam, M., Christiansen, K. L., Obel, C., Hilden, J., & Krasnik, A. (2008). Mental health among children seeking asylum in Denmark—the effect of length of stay and number of relocations: a cross-sectional study. *BMC Public Health*, 8, 293-301. doi:10.1186/1471-2458-8-293

### **Proposed recommendations**

1. The Central Agency for the Reception of Asylum Seekers: to place children (and their families) in small-scale locations suitable for them and their needs, and halt the practice of regular relocation.
2. The Ministry of Justice and Security: to expand the capacity of emergency reception centres and limit the total stay in emergency reception to a maximum of six months.
3. The Central Agency for the Reception of Asylum Seekers: not to place unaccompanied minors in regular reception centres.
4. The government: to ensure status holders can access adequate housing within three and a half months after receiving a residence permit.
5. The Ministry of Justice and Security: to close the Family Locations and work with implementing agencies to ensure that rejected asylum seekers and their children are supported intensively in the return to their country of origin.

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