

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



11 June 2008

**Case document No. 3**

**Defence for Children International (DCI) v. The Netherlands**  
Complaint No. 47/2008

**RESPONSE BY THE DCI TO THE OBSERVATIONS OF  
THE GOVERNMENT ON ADMISSIBILITY**

Registered at the Secretariat on 6 June 2008



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Directorate General of Human Rights – DG II  
Council of Europe  
7075 Strasbourg Cedex

**Observations on the admissibility  
Complaint 47/2008**

Amsterdam, 3 June 2008

Dear Sir, Madam,

Herewith we present you our response to the observations on the admissibility of our complaint, written by the Government of the Netherlands.

We will send you this document by regular mail and by E-mail.

Yours sincerely,

J.P Kleijburg, MA  
Executive director Defence for Children International the Netherlands

Cc: UNICEF the Netherlands  
Stichting LOS  
The Dutch section of the International Commission of Jurists.

## ***Introduction***

In her observations on the admissibility, registered by the Secretariat on 7 April 2008, the Netherlands government states that the complaint filed by Defence for Children International (hereinafter: DCI) should be deemed inadmissible on the following four grounds:

1. The complaint lacks substance;
2. The complaint unjustly invokes provisions of the Convention of the Rights of the Child (hereinafter: CRC);
3. The complaint goes beyond the scope of the Revised Charter, and
4. The status of the complainant organization is unclear.

DCI chooses this order because DCI is of the opinion that 'the substance of the complaint' is the most substantial ground on admissibility put forward by the Netherlands government. Therefore it should be dealt with first. DCI welcomes grounds two and three as the core of the complaint but is of the opinion that these should be discussed in the merits stage. The government position on the admissibility issues regarding the status of the complainant organization is not clear to DCI.

### ***1. Substance of the Complaint***

The Netherlands government argues that the complaint lacks substance due to the fact that (i) the Benefit Entitlement Act grants education, legal assistance and emergency medical treatment to people with no legal residence in the Netherlands and (ii) the Benefit Entitlement Act is not intended to be applied in a rigorous manner.

Based on the governments' definition on the substance of the complaint, DCI wishes to reiterate that the complaint focuses on the right to housing for all children residing in the Netherlands, no matter what their residence status might be. This means that the complaint is not primarily focused on the rights granted by the Benefit Entitlement Act (*Koppelingswet*). On the contrary, the complaint focuses on the right to housing, which is excluded in the Benefit Entitlement Act, and the effect of that exclusion on other Revised Charter rights

DCI reiterates that it strongly opposes the governments' statement that the Benefit Entitlement Act is not applied in a rigorous manner. Although that may have been the intention when the Benefit Entitlement Act was designed, the practise of policy has been that the government does not consider peoples needs when withholding government assistance. Instead of helping, the Netherlands government continually defends the position that it is peoples' own responsibility if they find themselves in dire situations.

DCI expresses its concern about the denial of the Netherlands government of the seriousness of the situation is the fact that the government knows the problems and their extent. The Netherlands government knows the statistics on the number of people involved.

In the complaint DCI already mentioned the amount of children that involved, thus showing the problem (and therefore the complaint) is substantial. Many problems stem from the fact that a child is living in an inadequate housing situation. In the Netherlands it is fortunate that only a very small amount of children actually live on the streets, this does not mean that there is no problem. Many of the children mentioned in the complaint have to live in situations of over crowdedness, bad hygiene and other dangers. Another common problem is that children get separated from their parents as a measure of child protection. In the following DCI will provide the Committee with three examples that illustrate the problems at hand.

1. In 2000 a Somali woman, Ms G., enters the Netherlands as an asylum seeker. The Netherlands government does not believe her story; the decision to deny her asylum survives the first appeal. After that, Ms G. and her two children aged 3 and 5 years old are denied (further) shelter by the government in November 2005. Ms G. ends up living on the streets. The shelter she received before was provided to her in a small town in the North of the Netherlands. In a desperate attempt to find shelter Ms G. moves to the big city Amsterdam. On 2 December 2005 Ms G. loses sight of her 3-year-old son. Ms G. turns to the police for help in finding him. The police tell her they cannot help her. More than a month later on 6 January 2006, the body of her son is found in the cold waters of the Lijnbaansgracht. Ms G. is given temporary emergency shelter after this traumatic event. Eventually she receives shelter from a private citizen, but the damage has been done. Her son is dead while her daughter suffers from severe psychological trauma.
2. Mr and Ms H., a refugee couple from Afghanistan with their now 6-year-old daughter (R.H.), end up living in the Netherlands without legal residence after a failed asylum procedure. In April 2005 the family gets forcibly removed from their shelter and end up living on the street for eight months. Finally they manage to secure shelter with a church organization. The shelter is overcrowded and inadequate to the extent that the daughter has developed behavioural problems and is behind in her mental development. The relevant government organization, Bureau Jeugdzorg (Youth Care Office), concludes in 2007 that R.H. is 'at a standstill in her development', that she is 'frightened (for instance of strangers)' and that she is 'tired and restless' and has 'difficulty concentrating'. Mr and Ms H. are not dealing with these issues due to stress and due to the over crowdedness of the shelter. Mr and Ms H. feel troubled towards the other occupants if R.H. causes a scene. According to the report, the situation of the family makes it virtually impossible to provide R.H. with the safety and stability she needs for an adequate development.

Her (physical and mental) development is under threat.

3. Ms O., a Chinese woman with two children, is abandoned by her husband, leaving her without legal residence in the Netherlands. Ms O. loses her house because she cannot pay the rent any longer. Ms O. and her children, at that time 9 and 13 years old, end up living on the streets. Sometimes they stayed in a park or at a railway station. One day they are found in a bus stop. The government then decides to take over custody of the children based on the sole fact that she cannot provide her children with adequate housing. The judge consequently gave an authorisation for home outplacement. Because the children could not get used to living in the appointed foster family, they are currently placed in an institution for youth care. This situation already continues for four years. According to the relevant authorities, Ms O. is capable and willing to take care of her children.

The above-mentioned examples show that the complaint is not based on theoretical problems, but that children as a result of the law and policy are denied a basic right to housing.

## *2. The Scope of the Revised Charter and invoking provisions of the CRC*

DCI welcomes the opportunity to discuss these issues at the international level. However, DCI is of the opinion that these issues should be dealt with in the merits stage of the complaints procedure and go beyond the question of admissibility.

### *a. The scope of the Revised Charter*

The Netherlands government states that the complaint goes beyond the scope of the Revised Charter because it concerns children that have no legal residence in the Netherlands. This would be contrary to the wording of Paragraph 1 of the Appendix to the Revised Charter.

As stated above DCI is of the opinion this is not an issue concerning the admissibility of the complaint and therefore should be dealt with in the merits stage of the procedure.

The governments' observations on the interpretation of the Decision on the Merits of Complaint No. 14/2003 (hereinafter: the French case) appear to be too general in nature to overthrow that decision in the admissibility stage. DCI welcomes the opportunity to discuss the statement of the government that a decision on the situation in the Netherlands would probably be opposite to the French case.

DCI strongly rejects the governments' statement that the Benefit Entitlement Act is interpreted flexibly, in other words stating that there is no problem. DCI

restates that there is a problem for children not legally residing in the Netherlands in securing the rights protected by the Revised Charter, especially the right to housing as a prerequisite in securing other Revised Charter rights.

Furthermore, the fact that the complaint has a broader scope than the French case cannot lead to inadmissibility of the complaint.

*b. Reference to the Convention on the Rights of the Child*

The government states that the complaint should be deemed inadmissible as far as provisions of the CRC are invoked. DCI is of the opinion that the reference made to the CRC provisions is just in the sense that it clarifies the provisions of the Revised Charter with respect to the situation of children.

DCI does not invoke the CRC provisions as such, but uses them as a reference for the interpretation of provisions of the Revised Charter. This method has been used by the Committee before, and it underlines the fact that the Netherlands government is positively committed to protect the rights of children.

*3. The status of the complainant organization*

DCI is uncertain on the issue raised by the government. The government does not argue that the complaint should be deemed inadmissible based on the status of DCI. Instead it reserves its position. Based on this reservation DCI observes that the government has not made a formal objection to the complaint being admissible on this ground.

In case the Committee reads the governments' remarks as an appeal on the admissibility of the complaint DCI argues as follows.

The government does not deny the right of DCI to lodge a collective complaint based on the Revised Charter. The government however states that it is not DCI, but DCI the Netherlands that has lodged the complaint. The government is of the opinion that this would circumvent the meaning of Article 1 and 2 of the Additional Protocol. The government reserves its position on this matter.

Two provisions in the Statutes of DCI are of importance in this matter:

**Art. 32 (The Presidency).**- The President of the Movement and the International Executive Council have the following attributions and responsibilities:

- 1 Represent DCI at the political and legal levels.

**Art. 8 (The National Sections).**- The national sections are those institutional representatives of DEFENCE FOR CHILDREN INTERNATIONAL (DCI) in a determined country and are constituted exclusively as such.

Based on these provisions the President of the Movement and the International Executive Council has the right to represent DCI in legal matters. Whereas the National Sections including DCI the Netherlands, can represent DCI in their respective countries.

DCI is of the opinion that Article 8 of the Statutes gives DCI the Netherlands the power to represent DCI in matters concerning legal issues against the Netherlands government. Therefore DCI is of the opinion that the mandate was not necessary from an organizational point of view. The mandate was included in the complaint to show the connection between DCI and the representation at the national level.

It cannot be disputed that the power of legal representation lies with the President of DCI. No Statute provision prohibits the President from mandating this power to a National Section. DCI therefore concludes that the power of legal representation in this matter has been mandated to DCI the Netherlands. The signature of both the Director and the Chairman of DCI the Netherlands therefore legally represent the President of DCI.

If this does not satisfy the Committee DCI offers to send in a copy of the complaint signed by the President of DCI.

### **Conclusion**

DCI concludes that the complaint should be deemed admissible based on the following grounds:

1. DCI reiterates that the Netherlands government excludes children from the right to housing in practise, and has shown by examples that the complaint is substantial and therefore should be discussed in the merits stage of the collective complaints procedure;
2. DCI welcomes the issues put forward by the Netherlands government, but concludes that the issues on the scope of the Revised Charter and the reference to the CRC should be dealt with in the merits stage of the complaint, and
3. DCI the Netherlands can represent DCI in this matter based on the DCI Statutes and the mandate given by the President of DCI.

J.P Kleijburg, MA  
Executive director Defence for Children International the Netherlands