

Declaration statement



Date: 08.08.2022

Location: The Hague, The Netherlands

I further hereby certify that this is an original work, that this thesis does not contain any materials from other sources unless these sources have been clearly identified in footnotes, and any and all quotations have been properly marked as such and full attribution made to the author('s) thereof.

I further authorise Leiden University, the Faculty of Law, the Master of Laws: Advanced Studies in International Children's Rights, its Programme Board and Director, and/or any authorised agents of the Institution, and persons named here in and above, to place my thesis in a library or other repository including but not limited to associated websites, for the use of the visitors to or personnel of said library or other repository. Access shall include but not be limited to hard copy or electronic media

Name:

Student ID Number:

Signature:

TABLE OF CONTENTS

Acknowledgements	v
List of abbreviations	vi
Executive summary	vii
Overview of main findings	viii
Chapter 1 Uncovering a children’s rights issue	
1.1. Introduction	1
1.2. Defining key concepts	2
1.2.1. Ethnic profiling	2
1.2.2. Minority youth	3
1.3. Research question, methodology & structure	3
1.3.1. Research question	3
1.3.2. Methodology and research techniques	4
1.3.2.1. <i>Ethical research</i>	5
1.3.3. Structure	5
Chapter 2 Protection from ethnic profiling in the international children’s rights framework	
2.1. Introduction	6
2.2. A child’s rights to protection from ethnic profiling?	6
2.2.1. Background of the child’s right to non-discrimination	6
2.2.2. Definitions and forms of discrimination	7
2.3. The international children’s rights framework	8
2.3.1. The CRC	8
2.3.1.1. <i>The right to non-discrimination</i>	9
2.3.1.2. <i>The right to privacy</i>	10
2.3.1.3. <i>The right to culture</i>	11
2.3.1.4. <i>The right to lawful police treatment</i>	11
2.3.2. Ethnic profiling in other international human rights instruments	12
2.3.2.1. <i>ICCPR</i>	12
2.3.2.2. <i>ICERD</i>	13
2.4 Conclusion	14
Chapter 3 The European legal framework on ethnic profiling compared to international standards	
3.1. Introduction	16
3.2. ECHR	16
3.3. Guidelines on child-friendly justice	17
3.4. Judging jurisprudence	18
3.4.1. New standards	18
3.4.2. The bodies	18
3.4.3. The comparison	18
3.5. Conclusion	21
Chapter 4 Case study of minority youth’s access to rights in the Netherlands	
4.1 Introduction	22
4.2. The applicability of children’s rights standards in the Netherlands	22

4.3. The domestic legal framework for the protection of minority youth from ethnic profiling	23
4.3.1. The Dutch law	
4.3.2. Practice of legal standards	23
4.3.3. A solid protection framework?	24
4.4. A reality check	25
4.4.1. Introduction	26
4.4.2. Concluding observations on the Netherlands	26
4.4.3. A domestic analysis	26
4.4.4. Field research	27
4.4.5. Protection in practice?	29
4.5. Conclusion	32
	32
Chapter 5 Covering up: a child's right to protection from ethnic profiling	
5.1. Conclusions	34
5.2. Recommendations	35
Annex I Interview experts	37
Annex II Interview boys	38
Annex III Consent form	39
Bibliography	40

ACKNOWLEDGEMENTS

LIST OF ABBREVIATIONS

ACHR	American Convention of Human Rights
CERD	Committee on the Elimination of Racial Discrimination
COs	Concluding observations
CRC	Convention on the Rights of the Child
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECRI	The European Commission against Racism and Intolerance
FRA	European Union Agency for Fundamental Rights
GC	General Comment
HRC	Human Rights Committee
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
KIS	Kennisplatform Integratie en Samenleving (Dutch Platform Inclusion & Community)
Kmar	The Royal Netherlands Marechaussee
NJI	Nederlands Jeugdinstituut (Netherlands Youth Institute)
OM	Openbaar Ministerie (Dutch Public Prosecution Service)
OPIC	Optional Protocol on a Communications Procedure
RSJ	Raad voor Strafrechtstoepassing en Jeugdbescherming (Dutch Council for the Administration of Criminal Justice and Protection of Juveniles)
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Fund
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum (Dutch Research and Documentation Centre)
WRR	Wetenschappelijke Raad voor het Regeringsbeleid (The Netherlands Scientific Council for Government Policy)

EXECUTIVE SUMMARY

Blue bias aims to uncover ethnic profiling as a children's rights issue in Chapter 1. First, the relevance of the topic is made clear, and the link it has to children's rights. The context of the Netherlands is chosen as a case study due to recent developments in case law and research. It is explained that youth belonging to an ethnic minority have increased vulnerability to ethnic profiling, especially adolescent boys. The concepts of race and ethnicity are demarcated, as well as ethnic profiling and minority youth. The thesis will focus on proactive police stop and search, as the risk exists that ethnic profiling occurs within this discretion. Police stops violate children's rights when they are executed without objective and reasonable justification solely on the basis of ethnicity. The main research question will seek to what extent minority youth is protected from ethnic profiling by the international and regional children's rights framework in the Netherlands.

The second chapter explores the extent of protection for minority youth that the international children's rights framework provides from ethnic profiling. Firstly, the background of the non-discrimination principle is explored, and discrimination is defined in relation to ethnic profiling. As there is no child-specific guidance given by the CRC Committee, this thesis submits State obligations are derived from CRC articles 2(1) the right to non-discrimination, 16 the right to privacy, 30 the right to culture, and 37(b) the right to lawful police treatment. As overlap can be found with similar rights in other treaties, this thesis explores only those provisions in the international framework that add to the protection from ethnic profiling for minority youth. Consequently, article 26 the right to non-discrimination and 2(3) the right to remedy ICCPR are explored as they are applied in the landmark case prohibiting ethnic profiling before a human rights body. The ICERD adds to the children's rights framework with its specific focus on racial discrimination and State guidance on ethnic profiling. The chapter concludes that heightened protection is necessary for minority youth, and despite recommendations for States to prohibit ethnic profiling, there is a lack of a children's rights perspective. States have obligations to refrain from discrimination, address discrimination in society, install complaints mechanisms for children, and strengthen children's rights through training and education.

In Chapter 3, the relevant law and guidance for children are explored in the regional framework. These are the ECtHR jurisprudence and Guidelines on child-friendly justice. The jurisprudence shows that the Court narrowly applies objective justification and shifts the burden of proof on the State in cases where discrimination is presumed from the facts. The Guidelines and the jurisprudence analysis (of case law from three different courts) provide an insight into how children's rights should be applied in a hypothetical child-specific case on ethnic profiling. It shows that for children, an extra layer of protection should be offered; a lower threshold to amount to a violation of rights should be applied. States should also be held accountable for not ensuring safeguards for children are in place, as a large police discretion has been found to be concerning by the Court.

The domestic implementation of the international and regional children's rights protection standards on ethnic profiling is analyzed in the third chapter. Although many of these relevant legal standards are directly applicable in the moderate monist Dutch system, there is inconsistency in the appliance in practice as there is large judicial discretion. The relevant domestic law and practice show the lack of child-specific protection from discrimination, large police discretion and difficulty in proving ethnic profiling before a court. The analysis of signals from civil society, government bodies, and children show the reality of the lack of adherence of the Netherlands to international and regional children's rights standards regarding ethnic profiling. In the concluding chapter, recommendations are made on how the treaty bodies, the Netherlands and the police can improve on implementing the children's rights standards in this thesis.

Keywords ethnic profiling, children's rights, police discretion, international law, racial discrimination, minority youth

OVERVIEW OF MAIN FINDINGS

By taking a children's rights approach to ethnic profiling, this thesis aims to contribute to the field of international children's rights. It seeks to uncover ethnic profiling as a children's rights issue and make recommendations on improving protection on this matter to the CRC Committee and the Netherlands.

The analysis of the international children's rights framework underscored the need for child-specific guidance on State obligations regarding ethnic profiling from the CRC Committee. There has been development of the principle of non-discrimination and adult-centered guidance on ethnic profiling, but a lack of a children's rights perspective. The fact that only one case under OPIC has been found admissible on article 2 the right to non-discrimination of the CRC makes it questionable to what extent a case about ethnic profiling will come before the Committee.

More child-specific standards on ethnic profiling should be set by human rights bodies. This thesis sets out the relevant international and regional framework and demonstrates how it should be applied in practice. It does so by comparing three cases and finding their strengths in using children's rights standards on discrimination and protection from the police. From this, it can be derived that the threshold of violations of the rights to non-discrimination, privacy, culture, and arbitrary treatment by the police should be lower for children as they are more vulnerable to violations of their rights. States should be held accountable if the safeguards for children are not in place, and in cases where discrimination is presumed, the burden of proof should shift to the State.

The case study of the Netherlands confirms how complex the implementation and enforcement of international and regional children's rights standards remains. It shows how a lack of child-specific legal protection from ethnic profiling combined with large police discretion increases the risk of ethnic profiling of minority youth. The Netherlands can improve adherence to the international and regional framework by creating legal protection for minority youth in criminal and civil law and limiting police discretion. Police also need training and guidelines on dealing with children in proactive controls; one is given in the recommendations at the end of this thesis. Finally, this research demonstrates how the CRC Committee should provide guidance on State obligations in dealing with ethnic profiling, which they can do together with the other treaty bodies. The government of the Netherlands can use support from the Committee, Dutch society, and children on how to address ethnic profiling. This research submits the participation of youth and learning from their lived experiences is key for States to ensure the enjoyment of children's rights.

Chapter 1 Uncovering a children's rights issue

1.1. Introduction

The death of George Floyd in 2020 sparked the Black Lives Matter protests across the globe. It fired up the public debate on ethnic profiling in many countries. The participation of youth was visible through the #BlackLivesMatter that incited 2,800 public protests.¹ Young people from ethnic minorities face structural discrimination in all stages of the justice system. As the police are the first point of contact for children in that system and hold 'crucial discretionary power', they must wield that power without bias. Police behavior should be aimed at the prevention of children falling into the juvenile justice system, rather than letting prejudice guide them in taking punitive measures.² Moreover, ethnic profiling can lead to humiliation, stigmatization, and overrepresentation of minorities in the justice system. It has proven to be counterproductive as it damages trust in authorities and violates human rights instead of upholding public order.³ This affects youth disproportionately as it inhibits their development.

The COVID-19 pandemic revealed that ethnic profiling is a global problem that lays bare the persisting structural racism in society. According to a report by Amnesty International, youth belonging to ethnic minorities were affected disproportionately by police checks during the lockdown.⁴ These groups can face multiple forms of discrimination based on ethnicity, socio-economic or migration status. Understanding the intersectionality of these various factors that create a social disadvantage is imperative in combating discrimination.⁵ Because only if intersectionality is identified, the various forms of discrimination can be addressed and there is full enjoyment of human rights.⁶

Youth belonging to an ethnic minority are more likely to experience several forms of discrimination, as adolescence can be a source of discrimination.⁷ As will be shown in this research, gender, ethnicity, and socio-economic status can play a role in police conducting a stop and search. Furthermore, not all youth is aware of their rights or has access to justice.⁸ Thus, a solid legal framework will not be enough to protect youth from ethnic profiling. Recognizing children's individual and collective disadvantages when growing up is imperative in leveling the playing field of chances to develop in the future. States have the obligation under the Convention of the Rights of the Child (CRC) to support every child as a rights holder and actively combat discrimination by officers of the State. This thesis will discuss these obligations also in relation to other human rights treaties.

Furthermore, the domestic implementation of international and regional children's rights that provide protection for minority youth from ethnic profiling in the Netherlands will be analyzed. This will prove to be an interesting case study as recent developments in policy and case law on ethnic profiling illustrate the underexposure of a children's rights perspective. This thesis aims to fill the gap in the existing literature on ethnic profiling by taking a children's rights approach to the topic.⁹ The international children's rights framework has the potential to support social change, but this thesis will show how much States will have to dig into their resources to extract the root of racism.

¹ UNICEF 2020, p. 4.

² Nowak 2019, p. 296-297.

³ CERD General Comment No. 36, para 26-30.

⁴ Amnesty 2020, p. 9-27.

⁵ Crenshaw 1991.

⁶ CERD GC No. 32, para 7.

⁷ CRC General Comment No. 20, para 22-30.

⁸ Arts 2014, p. 293.

⁹ See, *inter alia*, Rodrigues & van der Woude 2016 & 2021.

1.2. Defining key concepts

1.2.1. Ethnic profiling

As this chapter is about uncovering the rights issue that ethnic profiling is for children, it is necessary to define ethnic profiling. Firstly, The European Commission against Racism and Intolerance (ECRI) has the following definition:

“The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.”¹⁰

Rodrigues & van der Woude use a narrower definition with a focus on police stop and search: *“discrimination of citizens on the basis of ethnicity or nationality without objective justification.”¹¹* In this research, a similar definition of ethnic profiling is chosen. But first, the concept of ethnicity will be discussed to demarcate the discrimination ground.

The concepts of ethnicity, nationality, and race are interlinked, and no unified definitions are used in international law. Nor does the Committee on the Elimination of Racial Discrimination (CERD) or ECRI define the exact difference between ethnicity and race. This is also problematic as it gives States discretion to interpret the terms, which can have consequences for the protection a non-discrimination article provides.¹² However, there is a definition given of racial discrimination in article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in which ethnicity and other grounds fall under racial discrimination.¹³

The European Court of Human Rights (ECtHR) has also interpreted the terms race and ethnicity in a diverse manner, but in *Timishev v. Russia*, they found discrimination of a minority group based on ethnic origin a form of racial discrimination.¹⁴ In the Dutch legal context ethnicity has been acknowledged to fall within the scope of race; the latter is the term used in the anti-discrimination legislation.¹⁵ A recent ruling on ethnic profiling has mentioned ethnicity: “unchangeable external characteristics that may indicate a particular origin or descent (in particular skin colour and/or race).”¹⁶

Thus, from the above it can be concluded that ethnic profiling is a form of racial discrimination based on any features or behaviors that will give away a person’s ethnic origin. The latter falls within the scope of race according to article 1(1) ICERD. It depends on the legal context and facts of a case if other grounds of discrimination also apply. As this thesis focuses on youth in the Netherlands with a migration background, discrimination based on ethnic origin will be discussed. Ethnic profiling is understood in this thesis as: *Discrimination of youth on the basis of ethnicity due to police stop and search activities without objective justification.*

¹⁰ ECRI, General Policy Recommendation No. 11, para 1.

¹¹ Rodrigues & van der Woude 2016, p. 2294.

¹² Angioi 2019, p. 10-13.

¹³ “...the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

¹⁴ European Commission 2017, p. 9.

¹⁵ Kamerstukken II 1967/68, 9724, No. 3, p. 4-5.

¹⁶ ECLI:NL:RBDHA:2021:10283, para 6.3.

Lastly, the focus will be on proactive police controls, which means the police will conduct a stop and search on their initiative without a notification of a specific offence. As police have large discretion, they can act when they see fit to uphold public order, which provides a risk of ethnic profiling. For example, during traffic surveillance or when searching for weapons (prevention), but it can also include actions induced by their own 'suspicions'.¹⁷ However, it must be noted ethnic profiling of youth can also occur due to notifications with descriptions that are too general.¹⁸

1.2.2. Minority youth

In this paragraph it will be explained what is meant in this thesis by minority youth and why this specific group is chosen in the context of ethnic profiling. There is no uniform definition of the term minority, but the 1992 United Nations Minorities Declaration recognizes a group that has common identifiers, such as shared religion, ethnicity, language.

Ethnic minorities are disproportionately targeted with stop and search by police officials on a global scale.¹⁹ The ethnic constitution of these groups differs per country context, as does their struggle to access their rights.²⁰ In the Netherlands, the migration background of these groups varies, as the diversity in Dutch society results from migration flows from colonies and migrant workers. These people come from, *inter alia*, Morocco and Turkey and were attracted by the government between the 1960-1980s.²¹ Youth with a migration background in the Netherlands experience multiple forms of discrimination. They have less access to higher education and an increased chance of police registration.²²

In general, there is a lack of disaggregated data on youth experiencing ethnic profiling. However, in the Netherlands, specifically teenage boys with a migration background are targeted by police.²³ This group is affected disproportionately by ethnic profiling, as they are discriminated against on the intersecting grounds of gender, age (adolescence), ethnicity, and already have a socio-economic disadvantage in society. These intersecting forms of discrimination have also been recognized by the CRC Committee in the context of adolescence.²⁴ This stage of childhood runs from 10 years old until the age of 18.²⁵ Thus, this research on ethnic profiling will focus on the rights of this socially stigmatized group of minority youth. It must be noted the terms children (or minors) and youth are used interchangeably, as youth (or adolescence) is a stage of childhood.

1.3. Research question, methodology & structure

1.3.1. Research question

From the above follows that this research will focus on ethnic profiling of minority youth in the Netherlands, from a children's rights perspective. For this group, there should be heightened protection from ethnic profiling as it can interfere with their development and enjoyment of other rights. The CRC Committee has reiterated minority youth are vulnerable to multiple forms of discrimination and States

¹⁷ Landman & Sollie 2018, p. 7.

¹⁸ See paragraph 4.4.3. on field research.

¹⁹ UN High Commissioner for Human Rights 2022.

²⁰ Rehman 2000, p. 3-7.

²¹ Bouabid 2018, p. 1-3.

²² WRR 2020, p. 175. and Bezemer & Leerkes 2021, p. 74-75.

²³ Bezemer & Leerkes 2021, p. 7.

²⁴ CRC GC 20, para 35.

²⁵ *Ibid*, para 5.

should take an intersectional approach to ensure the right to non-discrimination.²⁶ They have mentioned the Netherlands should actively address discrimination against minority youth and improve inequality in the justice system.²⁷ From this, the central research question follows:

To what extent is minority youth protected from ethnic profiling by the international and regional children's rights framework in the Netherlands?

The following sub-questions will be explored, to answer this question, in the next chapters:

- What are the relevant provisions in international human rights law that provide child-specific protection from ethnic profiling and what State obligations are derived from this?
- What does the European legal framework add to the protection of minority youth from ethnic profiling?
- To what extent is there domestic implementation of the international and regional children's rights standards, as set out in this thesis, in the Netherlands?

1.3.2. Methodology and research techniques

A mix of primary and secondary sources is used to answer the main question, which will mainly entail desk research. First, a legal analysis of the protection of children from ethnic profiling under the international legal framework will be made. Hereafter, the relevant regional framework will be set out and a comparative analysis of jurisprudence, from the ECtHR, the Inter-American Court of Human Rights (IACHR), and the CRC Committee, will show how children's rights standards should be applied in a future child-specific case on ethnic profiling.

To investigate the domestic implementation of the non-discrimination principle under international law for children in the Netherlands a legal analysis of the domestic framework will be made. How the law works in practice will be concluded through a jurisprudence analysis and qualitative research (thematic analysis) of academic literature, journals, reports, and websites supported by quantitative data.²⁸

To support the conclusions derived from the qualitative analysis, field research is conducted. One interview was held with an expert from a civil society organization (Control Alt Delete) that combats ethnic profiling. More organizations were approached; however, they did not get notifications about ethnic profiling of minors.²⁹ Additionally, semi-structured interviews were held over two days in a local community center with four boys between the ages of 15 and 17 years old, and one interview with a focus group of 20 boys between the ages of 12 and 18 years old.

All interviews were conducted anonymously on request and under the guidance of the center's coordinators (with the permission of parents). All interviews were transcribed, and then summarized or direct quotes were used. The aim of this qualitative research is mainly to get insight into the experiences of minority youth, allow them to participate in this research and come up with solutions. This will also validate their position as rights holders. The consent forms and the semi-structured interview questions can be found in the annex.

²⁶ *Ibid*, para 26.

²⁷ CRC Concluding observations 2022, para 14 & 15.

²⁸ See Braun & Clarke 2006.

²⁹ The following organizations were approached: Defence for Children the Netherlands, the Children's Ombudsman, the Youth Helpline (Kindertelefoon), and the Human Rights Board (College voor de Rechten van de Mens).

1.3.2.1. Ethical research

To conduct the interviews with minors in this research the Ethical Research Involving Children project was consulted. They mention the importance of the participation of children in research to recognize their right to express their lived experiences and to be taken seriously. However, this triggers tension with the right to be protected as reliving those experiences through an interview can be damaging.³⁰ This research considered the questions in the checklist below to ensure the interviews adhered to children's rights standards.

- **Harms and benefits:** The youth coordinators in the community center made sure that benefits outweigh the harms for the youth. They have ensured youth voiced that this topic needs to be given a platform through their experiences. The children were interviewed in their surroundings to minimize the interview's impact.
- **Informed consent:** The informed and free consent of both youth and parents has been ensured. This has been done considering the evolving capacities of children; explaining to them what the research will be about in an age-appropriate manner.
- **Privacy and confidentiality:** The collected data will be in a password-protected environment on the author's computer. No names or other information that can be traced back to the youth will be mentioned in this research.
- **Payment & compensation:** It was ensured that no youth was economically affected through participation, as no one was given financial compensation for their time.

1.3.3. Structure

The second chapter will analyze to what extent the international children's rights framework provides protection for minority youth from ethnic profiling and how the human rights instruments complement each other. It will focus on the State obligations that are derived from this.

The third chapter will show the protection from ethnic profiling for minority youth added by the regional European framework. It will also compare different cases to show how ethnic profiling for minority youth should be interpreted by courts in a future child-specific case on this matter.

The fourth chapter will analyze to what extent the Netherlands adheres to these international and regional standards in domestic law and practice. Hereafter, the research question will be answered in Chapter 5, followed by recommendations to improve the implementation of children's rights.

³⁰ Graham et al. 2013.

Chapter 2 Protection from ethnic profiling in the international children's rights framework

2.1. Introduction

As previously mentioned, ethnic profiling violates human rights. Children are recognized as rights holders and enjoy protection under the CRC and other international human rights treaties. Although they have increased protection due to their vulnerability, it must be noted 'children's rights are human rights' that hold the same significance in international law.³¹ How minority youth is protected under this international framework from ethnic profiling will be set out in this chapter.

First, the background of the development of the child's right to non-discrimination, the definition and forms of discrimination will be discussed. Hereafter, State obligations under the principle of non-discrimination of the CRC, tied into other relevant rights in the Convention that should provide protection from ethnic profiling for minority youth will be outlined.

Lastly, the relevant provisions of other international human rights instruments that add to this framework on protection from ethnic profiling will be analyzed. There are many overlapping aspects of international standards relating to non-discrimination. Therefore, the analysis focused on the aspects of these sources that expand on the CRC framework, rather than those which overlap. These sources are the International Covenant on Civil and Political Rights (ICCPR) and the ICERD. This chapter will conclude that even though no (child) specific article prohibits ethnic profiling, there is an international framework in place to provide protection from ethnic profiling for minority youth.

2.2. A child's right to protection from ethnic profiling?

2.2.1. Background of the child's right to non-discrimination

There are no (child) specific provisions that mention or prohibit ethnic profiling in international human rights law. However, there is the right to non-discrimination in several treaties and other relevant provisions, such as the right to freedom of movement or the right to privacy, to define the State's obligations regarding ethnic profiling. Since the drafting of the Universal Declaration of Human Rights (UDHR), the right to non-discrimination has developed and the awareness of groups vulnerable to this. However, the rights of minority groups and of children have not always been acknowledged or gained attention.³² To critically reflect on the minority youth's right to non-discrimination, it is important to understand the origins of international human rights law and the development of the non-discrimination principle.

Firstly, the origins of international law are rooted in colonization. Europeans imposed international law on the Americas to legitimize Western superiority over indigenous culture. It consolidated the societal (racial) order and the rights derived from that; indigenous people's culture was found inferior, so the people had no rights.³³ This also impacted how authors have reflected on the Human Rights framework, as this has been said to be dominated by Western views that aim to 'save' people from 'uncivilized cultures'.³⁴ On the other hand, the preamble of the ICERD recognizes the need for anti-discrimination

³¹ Doek 2018, p. 24.

³² Rehman 2000, p. 3-7 and Cantwell 2010, p. 37-40.

³³ Anghie 2005, p. 14-31.

³⁴ Mutua 2001, p. 2001-245.

law due to colonization.³⁵ This brings up the question if human rights aim to protect and empower or impose and dominate. This thesis submits the framework seeks to protect; however, it remains paramount to reflect critically on the flaws within the framework and identify where empowerment and protection fail.

Similarly, children were not always recognized as rights holders and the CRC has been criticized for being rooted in Western notions of childhood.³⁶ However, this thesis submits the development of the CRC's non-discrimination principle until now has played a role in consolidating the rights of minority youth. The development of non-discrimination principles in human rights law began after the Second World War, with the establishment of the International Bill of Human Rights; the UDHR (1948), the ICCPR and the International Covenant of Social and Economic Rights (ICESCR) in 1966. The ICERD is an entire non-discrimination treaty that provides more ground-specific discrimination prohibitions.³⁷ Although these apply to children, a child-specific non-discrimination provision (article 2) was consolidated when the CRC came into force in 1990.³⁸ Its non-legal predecessor the 1959 Declaration of the Rights of the Child, already mentioned in article 1 "The right to equality, without distinction on account of race, religion or national origin."

As discussed in the first chapter, an extra layer of protection is required for youth. This especially applies to discrimination, as besides ethnicity or gender, adolescence (or childhood) can be a source of discrimination and diminish access to rights. Thus, the CRC adds this to the international human rights framework. However, it must be noted that the UN treaty framework has been criticized for its high level of noncompliance due to limited enforcement power. The treaty bodies produce many non-legal but authoritative documents, such as General Comments, which are interpretative guidelines for State obligations. To monitor compliance, they also produce Concluding observations (after State reporting) and Views (from the individual complaints procedure), which are non-binding 'verdicts' by the treaty body Committee. These are highly authoritative yet not legally binding on States.³⁹

2.2.2. Definitions and forms of discrimination

All human rights treaties contain non-discrimination clauses, yet some are non-autonomous and thus dependent on other provisions. Other articles are autonomous and can be solely invoked before a court.⁴⁰ These non-discrimination rights stipulate State obligations yet do not stipulate detailed definitions of discrimination. However, the UN Human Rights Committee (HRC) created a definition under the ICCPR which is frequently cited:

*any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*⁴¹

The HRC refers to non-discrimination as a 'basic and general human rights principle' that prohibits discrimination and comes with positive obligations for States to reach equality through 'affirmative action'

³⁵ ICERD 1965, para 3-4.

³⁶ Faulkner & Nyamutata 2020, p. 68-70.

³⁷ Besson & Kleber 2019, p. 46.

³⁸ Besson 2005, p. 440-441.

³⁹ Bantekass & Oette 2020, p. 202-217.

⁴⁰ Besson & Kleber 2019, p. 46.

⁴¹ HRC General Comment No. 18, para 6 & Besson 2005, p. 435.

or preferential treatment of groups that experience discrimination.⁴² Thus, equality is also a principle in human rights, that can be achieved through a state fulfilling negative and positive duties on non-discrimination rights.⁴³ The HRC does not explicitly refer to a right but a principle of non-discrimination. Some authors argue the use of this term can lead to diminished justiciability of non-discrimination articles, as principles are more guidelines and rights can be directly invoked before a court.⁴⁴ The HRC established non-discrimination is an important principle amongst human rights instruments as it guides how all rights are applied; through this lens, all rights should be equally accessible to all humans.⁴⁵ Therefore, this research submits non-discrimination is a guiding principle, which does not diminish the right to non-discrimination as stipulated in diverse articles throughout specific human rights treaties such as article 2 of the CRC.

To establish if the threshold of discrimination is met, a case needs to demonstrate the occurrence of differential treatment but also a lack of an objective and reasonable justification. Furthermore, a proportionality test needs to show if the aim of the measure and how it was executed are proportional and necessary.⁴⁶ For example, in the case of a stop and search of youth, the police should have a legitimate aim (suspicion of an offence) and a stop and search of a child should be a proportional and subsidiary measure.

Additionally, discrimination can occur *de jure* and *de facto*. The first is where a state imposes discriminatory laws or policies and the latter is discrimination that occurs by actions of people in practice that are not according to the law.⁴⁷ Furthermore, discrimination can be direct or indirect and if the first happens on the basis of ethnicity in the context of policing it cannot be justified or legitimate. Although ethnic profiling is a form of direct discrimination, it is hard to prove in the case of ethnic profiling whether a person is stopped and searched on the sole ground of ethnicity. Moreover, the legitimate aim of police to uphold public order requires them sometimes to use surveillance profiles where ethnicity plays a role. Lastly, other guidelines the police follow may lead to indirect discrimination (or ethnic profiling); such as traffic control in certain areas can affect a minority group disproportionately.⁴⁸

2.3. The international children's rights framework

2.3.1. The CRC

The CRC is the most widely ratified human rights instrument in the world that entered into force on 2 September 1990, it considers the specific vulnerabilities and strengths of children.⁴⁹ It has also been ratified by the Netherlands, which thus is the primary duty bearer under the Convention. The individual complaints procedure, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC), has not been ratified by the Netherlands. The implementation of the CRC has come a long way since its ratification in 1989. As it is a living instrument, the Convention is still adjusting to its modern-day context.⁵⁰ However, as far as setting standards for ethnic profiling, the

⁴² *Ibid*

⁴³ Vandenhoe et al. 2019b, p. 41; States have obligations to respect, protect, and fulfil. Negative obligations are understood as refraining from discrimination, and positive duties as taking action to prevent discrimination from happening and promote equality.

⁴⁴ Abramson 2008, p. 53-55.

⁴⁵ HRC GC No. 18, para 1.

⁴⁶ Vandenhoe 2005, p. 34-55.

⁴⁷ Vandenhoe 2005, p. 66-67.

⁴⁸ FRA 2018, p. 18-26.

⁴⁹ Doek 2018, p. 9-11.

⁵⁰ Kilkelly & Liefwaard 2019, p. 7.

CRC has not yet evolved; it is not mentioned in the Convention itself, nor is it addressed in the Committee's authoritative guidelines (General Comments) so far.

The right to non-discrimination has developed through the Committee's guidelines and jurisprudence. In addition, much has been written in the academic context on the child's right to non-discrimination and on ethnic profiling of adults. But there is a lack of research on ethnic profiling from an international children's rights perspective.⁵¹ Thus, below the protection standards on ethnic profiling, according to this research, in the CRC are outlined.

2.3.1.1. *The right to non-discrimination*

Firstly, article 2 of the CRC is relevant to provide protection for minority youth from ethnic profiling. This is a child-specific non-discrimination right as it also recognizes the child's parents or legal guardian can be a source of discrimination. The article is one of the four General Principles distinguished by the Committee that underlies the interpretation of all other provisions in the Convention.⁵² The scope of article 2 applies to 'all children within the jurisdiction', which means everyone under 18 (as stated in article 1 CRC) on the State's territory. However, the CRC Committee has acknowledged that jurisdiction may fall beyond territory due to globalization and improving implementation of the Convention.⁵³

The bold words in the first paragraph below reveal that 2(1) CRC is a derivative right that depends on other rights in the Convention, whereas the bold part in 2(2) can be interpreted to widen the material scope of the article.⁵⁴ This could be read as a stand-alone right and offer heightened protection from discrimination for children. But its relevance in the context of ethnic profiling can be questioned, as children are not stopped and searched because of the status of their parents. However, this research contends it could be argued in some cases that children are more vulnerable to police checks due to parents' activities. States can take repressive measures against certain social groups and children can suffer for their parents belonging to this.⁵⁵ For example, Roma people have been stigmatized due to their way of life and alleged link to criminality. Because of this, they are disproportionately targeted by police, which can also affect children.⁵⁶ This research submits this could fall within the scope of article 2(2), as children can suffer from ethnic profiling because of their parents.

1. States Parties shall **respect and ensure the rights set forth in the present Convention** to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties **shall take all appropriate measures** to ensure that the child is protected against **all forms of discrimination** or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Besson & Kleber mention the potential of the material scope of article 2(2) has yet to be explored.⁵⁷ In the General Comments and Concluding observations article 2 is not discussed in separate paragraphs and the Committee is more focused on *de facto* discrimination.⁵⁸ Only one view was adopted in the

⁵¹ See also Aasgaard & Langeford 2022, p. 203.

⁵² As well as articles 3,6 and 12 CRC; See Hanson & Lundy 2017, p. 286.

⁵³ Vandenhole et al. 2019a, p. 53-54.

⁵⁴ Besson & Kleber 2019, p. 53.

⁵⁵ See also Abramson 2008, p. 129-132; he argues children can suffer because of behavior of their parents.

⁵⁶ Council of Europe 2012, p. 11-14.

⁵⁷ Besson & Kleber 2019, p. 53.

⁵⁸ Vandenhole et al. 2019a, p. 55.

OPIIC, that mentioned article 2(2) but the Committee did not discuss this article further in the merits.⁵⁹ Thus, there is potential to be explored here in future cases by the Committee. Additionally, article 2(2) does not have an equivalent in other treaties to support clarification, so it is deemed beyond the scope of this thesis to analyse the possibilities this article can offer for the protection of minority youth from ethnic profiling and the focus will be on article 2(1) in this analysis.

Under article 2(1) CRC state obligations are to 'respect', which means States should refrain from discrimination of 'any kind' (a negative obligation). But the article also contains a positive dimension, 'to ensure', that stipulates States must actively protect children from discrimination and fulfil the enjoyment of other rights. The Committee has clarified that for effective implementation, States need to actively combat discrimination by ensuring special measures for specific groups that may need it. This may require change in legislation, policy, and changing attitudes in society.⁶⁰

The article specifically prohibits discrimination on the basis of ethnicity, which is relevant for this thesis. It must be noted that police have the discretion to uphold public order. Still, the Committee has explained this has to be lawful, individual (not collective), according to the proportionality principle and 'represent the least intrusive measure' not to violate article 2.⁶¹ As this is a derivative right and ethnic profiling does not only violate article 2(1) CRC, the principal rights and state obligations relevant to this research will be set out. It must be noted ethnic profiling can interfere with many children's rights depending on the context, such as article 31 CRC the right to play or article 28 CRC the right to education, but it is deemed beyond the scope of this thesis to write how all these rights are related to ethnic profiling.

2.3.1.2. *The right to privacy*

Secondly, ethnic profiling interferes with the child's right to privacy under article 16 CRC. The right is formulated in the same wording as its counterpart in the ICCPR, yet for children the consequences of interference with this right are greater. It is an imperative factor in the child's development of agency and autonomy. Thus, the discretion for States to interfere with this right is limited.⁶² Article 16 stipulates that interference with privacy cannot be arbitrary and needs to be lawful, which this thesis contends are the parts relevant for protection from ethnic profiling. The second paragraph of the article obligates States to create laws to protect children from such interference. The Committee has mainly given attention to privacy protection of children in the digital environment and justice proceedings.⁶³ This research submits they could have included the adverse effects of the child's violation of privacy during a stop and search in General Comment No. 24 and how minority groups are disproportionately affected.

The Committee addressed the prevention of children falling into the juvenile justice system, which intersects with the rights to development, privacy, and discrimination. The corresponding articles 6,16, and 2 are violated if minority youth is subjected to ethnic profiling, which diminishes the trust and legitimacy of state officers. For this first contact with the justice system to be educational and not aimed at punishment is crucial in preventing child offending and protecting their rights.⁶⁴ The Committee has acknowledged that privacy plays a vital role for adolescents and that States should 'strengthen and ensure' respect for privacy especially in the public space.⁶⁵ This has been specifically recognized for children in street situations and how States should prevent discrimination and promote respectful police

⁵⁹ *M.K.A.H. v. Switzerland*.

⁶⁰ CRC GC No. 5, para 5 & GC No. 14, para 41.

⁶¹ CRC GC No. 6, para 18.

⁶² Whalen 2022, p. 93-97.

⁶³ See CRC GC No. 10, 24 & 25.

⁶⁴ CRC GC No. 24, para 1-4.

⁶⁵ CRC GC No. 20, para 46 & 75.

treatment to protect children's privacy.⁶⁶ Although, in GC No. 10 (para 64) it has been stated privacy should be respected during police identification checks, there is a link missing between interference of privacy by state officers in public spaces that mainly affects minority youth.

2.3.1.3. *The right to culture*

Thirdly, article 30 CRC does provide a right to minority youth as understood in this thesis; '...ethnic minorities or persons of indigenous origin'.... shall not be denied the right....to enjoy his or her own culture.' The Committee explains that States should take positive measures of protection for this group through legislation, policy, and prevention of discrimination, which requires disaggregated data collection. Furthermore, these groups should be consulted in a culturally sensitive manner when taking measures. The Committee mentions non-discrimination as an 'inalienable right', which also entails the elimination of racist attitudes in society through public information and education. A specific mention is that States should identify the multiple forms of discrimination children may face.⁶⁷ This intersectional approach to discrimination is also taken towards adolescents who face various forms of violations. The specific vulnerability in the public space of adolescents belonging to a minority group may lead to discrimination, social exclusion, and overrepresentation of these groups in the justice system. States are urged to support and strengthen the diversity of cultures amongst youth through legislation, policy and programs targeting intersecting violations of rights.⁶⁸ However, there could be more mention of how to deal with police discrimination, such as ethnic profiling, as there is only the suggestion States should train law enforcement on protecting minority youth.⁶⁹

2.3.1.4. *The right to lawful police treatment*

Lastly, article 37(b) CRC prohibits arbitrary and unlawful arrest, which is further supported by the non-discrimination article. Although it is not mentioned by the Committee in General Comments, this research submits arbitrary and unlawful police stop and search (that can lead to arbitrary arrest) is also prohibited under this article. Article 37 established substantive and procedural rights for children deprived of their liberty.⁷⁰ Deprivation of liberty is recognized to be different from the right to liberty of person (article 9(1) ICCPR), as deprivation of liberty is a form of detention in a custodial setting without consent and not merely restricting of the freedom of movement.⁷¹ However, children require a higher level of protection, as the impact on their freedom of movement is greater than for adults. This is because children 'differ from adults in their physical and psychological development' and will suffer from the effects of a stop and search more. A lack of consideration of this vulnerability and children's rights can negatively impact the child's development and 'have serious consequences for the broader society'. For example, States that have had a punitive approach to law enforcement have higher crime rates.⁷² Therefore, this thesis submits the threshold for deprivation of liberty should be lowered for children to include stop and search checks and ethnic profiling should fall within the scope of article 37(b).

States should implement special safeguards to prevent discrimination specifically for minority youth from the 'earliest contact' with the juvenile justice system, such as training police officers and offering redress where discrimination occurs.⁷³ Especially *de facto* discrimination and inequality, due to the lack of

⁶⁶ CRC GC No. 17, para 43.

⁶⁷ CRC GC No. 11, para 16-29.

⁶⁸ CRC GC No. 20, para 26, 35 & 36.

⁶⁹ CRC GC No. 11, para 77.

⁷⁰ Manco 2015, p. 54.

⁷¹ Liefwaard 2019, p. 4-7.

⁷² CRC GC No. 24, para 2 & 99.

⁷³ CRC GC No. 24, para 39, 40 & 112.

policies to include minority youth, should be addressed.⁷⁴ The focus on education and prevention of measures by law enforcement regarding children is due to neuroscientific evidence that has shown children cannot oversee the consequences of their actions. Their rapid brain development, especially in adolescence, increases risk-taking behaviour and the inability to control impulses.⁷⁵ This is also why this thesis submits that heightened protection from ethnic profiling for minority youth is necessary. This means the threshold of what amounts to deprivation of liberty should be lowered if a stop and search takes up an extensive amount of time and is conducted in an aggressive manner.

It can be derived from other authoritative UN guidelines as the Riyadh Guidelines and the Beijing Rules, that States should focus on prevention of contact with the juvenile justice system by supporting vulnerable groups in their development and police need to be trained to support children's rights as they have a large discretion.⁷⁶ Although these are authoritative documents, that are binding on States, these are considered soft law just as the General Comments.

2.3.2. Ethnic profiling in other international human rights instruments

The international children's rights framework is not limited to the CRC; children also enjoy the protection of other treaties. The CRC Committee often refers to them in their General Comments that are relevant to support a right in the CRC as they recognize the indivisibility and interdependence of human rights. The ratification of other treaties is recommended for better implementation of the CRC.⁷⁷ For improvement of the implementation of non-discrimination, the CRC Committee refers to the ICCPR and the ICERD.⁷⁸ These international human rights instruments do not contain a specific article on the prohibition of ethnic profiling. However, they have set standards relating to adults that can also apply to children. The relevant rights and State obligations of the ICCPR and ICERD will be analyzed.

2.3.2.1. ICCPR

The ICCPR and its Optional Protocol to the individual complaints procedure have been ratified in the Netherlands since 1978 and contain many relevant rights that protect children from ethnic profiling. Some articles are similar to those in the CRC, such as the right to non-discrimination and the right to privacy. The latter is worded the same, so the focus will be on principal rights that add something to the child-specific legal framework above.

Firstly, article 24(1) ICCPR is a provision recognizing the specific protection of children 'on the part of his family, society and the State' without discrimination. The HRC explains that children require specific protection against discrimination under this article, and it should be read in conjunction with articles 2 and 26 ICCPR.⁷⁹ As article 24 only contains grounds such as race, skin colour and language and article 26 widens this with the wording 'on any ground'. State parties have the duty to report if legislation and practice ensure protection measures.⁸⁰

Furthermore, article 26 ICCPR guarantees equality before the law, which is not enshrined in article 2 CRC. It also adds value to the international children's rights framework of ethnic profiling as it is an

⁷⁴ CRC GC No. 10, para 6.

⁷⁵ CRC GC No. 24, para 22.

⁷⁶ The Riyadh Guidelines 1990, para 6 & The Beijing Rules 1986, para 12.

⁷⁷ CRC GC No. 5, para 17.

⁷⁸ CRC GC No. 11, para 6 & GC 5, para 12.

⁷⁹ HRC General Comment No. 17 & 18, para 5.

⁸⁰ *Ibid*

autonomous non-discrimination right.⁸¹ Ethnicity is not mentioned as a discrimination ground in this Covenant, but in the General Comment on minority rights. Furthermore, the HRC explains article 26 'governs the exercise of all rights' within State territory.⁸² Thus, equality and non-discrimination should be reflected in all laws of a State party, which makes the scope of this article extensive. Additionally, the HRC states that constitutional incorporation of these principles is not enough; *de facto* discrimination should be eliminated through legal and administrative measures. They also make the sidenote that reasonable and objective differentiation with a legitimate aim will not constitute discrimination.⁸³ The derivative non-discrimination right (article 2) has the valuable addition of right to remedy, which is not enshrined in the CRC.⁸⁴

As stated in the first chapter, ethnic profiling is without objective and reasonable justification, so it can meet the threshold of discrimination under this article. The only case before a UN Treaty body that confirms this is *Williams v. Spain*.⁸⁵ Where an identity check of a Spanish citizen with a migration background amounted to the violation of articles 26 and 2(3) the right to remedy ICCPR. The HRC found that although identity checks for crime prevention or public security are a legitimate purpose, ethnicity cannot be indicative of suspicion of unlawful conduct. As the complainant was singled out because of her skin colour and ethnicity played a role in constructing a risk profile for identity checks, the objective and reasonable justification standard was not met. Furthermore, the complainant had not been offered a remedy. The State was put under the obligation to provide this, apologize, and ensure that this will not be repeated.⁸⁶

This thesis contends these standards can apply to minority youth. However, as the impact on children is greater than on adults, other standards should apply to increase special protection measures for children. What such a case should look like will be concluded in the comparative analysis in Chapter 3. The ICCPR provides some strong rights for children. However, there is a lack of a child-specific approach to discrimination in the guiding documents.

2.3.2.2 ICERD

The Netherlands ratified the ICERD and its Optional Protocol for an individual complaints procedure in 1971, which are legally binding. Children are not mentioned in this Convention, nor is age taken in as a factor of discrimination. Similar to the CRC, ethnicity is stipulated as a ground for discrimination in this Convention. A unique feature of the ICERD is that a definition of racial discrimination and race is given in article 1(1), as stated in paragraph 1.2 of the first chapter. Additionally, it puts States under an obligation to combat racism on a systemic level. Below the ICERD standards that add to the children's rights framework will be laid out.

Under article 2 States have an obligation to design laws and policies to eliminate racial discrimination against individuals and groups, and if needed, take action to ensure 'development and protection' to enjoy human rights. In the case of ethnic profiling by police officers, the CERD explains this requires States to prohibit racial profiling as the practice can perpetuate racism in society.⁸⁷ General Comment No. 36 is specifically on ethnic profiling by police officers. Although age is mentioned as a ground of

⁸¹ Besson & Kleber 2019, p. 58 & General Comment No. 18, para 12.

⁸² HRC GC No. 23, para 4.

⁸³ HRC General Comment No. 18, para 9 & 13.

⁸⁴ Liefwaard 2019, p. 196.

⁸⁵ Open Society Justice Initiative 2009.

⁸⁶ *Williams Lecraft v. Spain*, para 7.2 – 9.

⁸⁷ CERD General Comment No. 36, para 23. It must be noted this GC is about 'racial profiling', which in the definition given in para 13 is similar to ethnic profiling as used in this research.

discrimination in the GC and young people are recognized to be targeted by police, there is no child-specific approach to ethnic profiling.⁸⁸ This thesis submits the approach taken in the Convention and the General Comment adds to the legal framework above as it places States under obligations to combat racism on a systemic level to eliminate the practice of ethnic profiling.

Additionally, article 7 obligates States to combat racial discrimination through education and information. These positive measures should also lead to structural change in police behavior to prevent ethnic profiling.⁸⁹ Furthermore, article 6 obligates States to provide effective remedies to those that suffer from racial discrimination through 'national tribunals and other State institutions.' The CERD has explained that this should be available collectively for minority groups.⁹⁰ As ethnic profiling falls within the scope of racial discrimination, it can be concluded that States should provide effective remedies for minority youth if they suffer from ethnic profiling.

Lastly, the recommendations by the CERD in General Comment No. 36 are detailed actions that States should take. These measures to combat ethnic profiling complement and reinforce each other. States should have:

- Law and policy to prohibit ethnic profiling (administrative and criminal law)
- Cooperation with civil society and inclusion of minority groups/communities in dialogues
- Clear guidance for stop and search checks + police training on intersectional discrimination
- Independent periodic audits and complaint mechanisms with victim-centered approaches
- Collect disaggregated data⁹¹

This thesis submits that additional protocols for police in dealing with children are necessary. For example, guidelines on how to communicate with children, making stop and search a measure of last resort, and giving information about accessible complaint mechanisms. Lastly, States should be guided on how to include children in law and policymaking or collect data in a child-friendly manner.

2.4. Conclusion

Concluding, to effectively implement protection measures against ethnic profiling for minority youth, national laws should not only reflect the non-discrimination principle but also consider the child's right to privacy, culture, and lawful police treatment. As heightened protection is necessary for minority youth, a group vulnerable to multiple forms of discrimination, States should lower the threshold for violations due to ethnic profiling. Police checks can occur, to uphold public order, with an objective and reasonable justification, yet the proportionality test should have a higher threshold for youth.

Youth should also have access to culturally appropriate and age-sensitive complaints mechanisms. Next to legal change, addressing discrimination in society, awareness raising and training of police and judiciary on children's rights standards need to be included. These authorities should all be able to communicate in a child-friendly manner and be aware of children's rights. States should also actively strengthen minority children's rights to avoid marginalization.

As stated at the beginning of this chapter, it remains important to reflect critically on the framework on how it empowers and protects. It can be concluded from the above that the international children's rights

⁸⁸ *Ibid*, para 13 & 48.

⁸⁹ *Ibid*, para 25.

⁹⁰ *Ibid*, para 24.

⁹¹ *Ibid*, para 37-57.

framework has no child-specific article that explicitly prohibits ethnic profiling or obligates States to limit police discretion. Although it must be noted that the HRC prohibits ethnic profiling in the *Williams* case and the CERD recommends States to prohibit ethnic profiling in criminal and civil law. Furthermore, the question is how feasible it is for children to exhaust domestic remedies and bring a case on ethnic profiling before the HRC, as there only has been one case on this by an adult. This thesis submits that on paper there is a holistic approach visible towards ethnic profiling in the framework, but up to now no clear guidance has been given on how children should receive increased protection from this. This will be explored further below through a comparison with the European framework in practice.

Chapter 3 The European legal framework on ethnic profiling compared to international standards

3.1. Introduction

For the Netherlands, the regional framework also provides relevant protection for minority youth from ethnic profiling. There is an extensive legal framework on discrimination in Europe, but no specific law prohibiting ethnic profiling. The ECtHR has set standards on ethnic profiling. Despite the extensive framework on non-discrimination and guidance on ethnic profiling, the relevant European legal documents, Directives and Guidelines lack a children's rights approach.⁹² However, the non-binding Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Guidelines on child-friendly justice), do give some guidance on police conduct towards children.

Thus, the focus in this chapter will be on the Guidelines on child-friendly justice, the European Convention of Human Rights (ECHR) and its Court, as these add to the international framework above. First, the ECHR protection standards on ethnic profiling will be discussed and the Guidelines. Lastly, a comparison of international and regional jurisprudence will show how relevant provisions to protection from ethnic profiling should be used in practice from a children's rights perspective.

3.2. ECHR

The ECHR and Protocol No. 12 are ratified by the Netherlands and contain relevant non-discrimination provisions. The ECtHR has produced jurisprudence on ethnic profiling. As of date, no claim has been brought before the Court by a minor on this topic. Children do have legal standing before the Court, and they have an extensive body of jurisprudence on children's rights on other issues and regularly cite the CRC.⁹³

Article 14 of the ECHR is similar in wording to other derivative non-discrimination rights in international conventions, as it underlies the 'rights and freedoms set forth in the Convention'. It prohibits specific grounds of discrimination and stipulates 'other status', which widens the scope, and recognizes discrimination on the grounds of age. Additionally, article 1 of Protocol No. 12 is an independent non-discrimination provision that provides increased protection as it also prohibits discrimination in national law.

For protection from ethnic profiling of minority youth, another relevant provision in this Convention is article 8 the right to private and family life. The Court has explained that stop and search by the police without a reasonable and objective justification amounts to a violation of this right. It also warned about the risks of broad police discretion in relation to ethnic profiling.⁹⁴ In a case of racial discrimination, the concept of reasonable and objective justification should be 'interpreted as strictly as possible'.⁹⁵ In the

⁹² For example, the Court of Justice of the European Union (CJEU) has not set specific standards on this topic for children, or the Racial Equality Directive does not mention specific protection for children. Although the European Commission against Racism and Intolerance (ECRI) has written a useful policy recommendation (No.11) for States on how to combat discrimination in policing, but there is no advice on how police specifically should communicate or deal with children and recommendations are similar to those in ICERD GC No. 36.

⁹³ FRA 2022, p. 32-33.

⁹⁴ *Gillan and Quinton v. UK*, para 61-65 & 76-87.

⁹⁵ *D.H. and other v. The Czech Republic*, para 196.

case of *D.H. and other v. The Czech Republic*, it was recognized that although the intent of individual state officials or a policy may not be discriminatory, it can result in *de facto* discrimination.⁹⁶

Furthermore, the Court acknowledged in cases where racial discrimination is presumed from the facts, the burden of proof shifts to the State.⁹⁷ The justification of difference in treatment based on race is submitted to a strict test, as in *Timishev v. Russia* the Court established a 'very weighty reasons test', which was used instead of the 'margin of appreciation' doctrine.⁹⁸ The latter means States are granted discretion to make their own decisions in a democratic society; the Court either extends them a wide margin or applies it narrow.⁹⁹ This thesis submits the above cases have shown the Court does not grant a wide margin of appreciation to States in the cases of discrimination on ethnic origin.

The restriction of the right to freedom of movement (Article 2 of Protocol No.4) on the basis of ethnicity has also been found to violate article 14.¹⁰⁰ In *Lingurar v. Romania*, ethnic profiling amounted to a violation of article 14 and was linked specifically to institutionalized racism and led to a breach of article 3 as it constituted degrading and inhuman treatment. The Court expressed that the State should be held to higher standards of fulfilling its positive obligations to combat bias against ethnic minorities.¹⁰¹

There have been more cases before the European Court than international human rights bodies. In this sense, the Court has developed standards for ethnic profiling in recent years. However, those are up to now not child specific. This thesis submits the international framework could support the European Court's judgements, and vice versa, in developing child-specific standards on ethnic profiling, which will be further explored.

3.3. Guidelines on child-friendly justice

These Guidelines aim to promote child-friendly justice amongst Council of Europe Member States (including the Netherlands) and are not legally binding but give child-specific guidance to principles enshrined in international law and the ECHR.¹⁰² Child-friendly justice means a justice system where children's rights are respected, communication is age-appropriate, and that is accessible, speedy, and adapted to a child's needs. This is especially imperative for groups vulnerable to discrimination.

Furthermore, the Guidelines submit that police should inform parents and children about their rights and explain the reasons for police intervention. This should be done in a language the child understands. To ensure implementation of these standards, the police should have a common assessment framework and review and complaint mechanisms should be available and accessible to a child.¹⁰³ This adds to strengthening the regional framework on protection of minority youth from ethnic profiling as it gives State's guidance on how children should be treated by the police in light of the European standards set above.

⁹⁶ Klaas et al. 2020, p. 47.

⁹⁷ *Timishev v. Russia*, para 39 & 57.

⁹⁸ Gerards 2017, p. 2.

⁹⁹ Fenton-Glynn 2021, p. 397.

¹⁰⁰ *Ibid*, para 53-59.

¹⁰¹ Para 79-80 & 82.

¹⁰² Guidelines on child-friendly justice 2010, p. 13-17.

¹⁰³ *Ibid*, p. 17-56.

3.4. Judging jurisprudence

3.4.1. New standards

As there are no international or regional child-specific standards on ethnic profiling established in practice, it will now be explored what could be developed. In Latin America, there has been a child-specific case about police treatment before the IACHR.¹⁰⁴ As from this case lessons can be drawn that are relevant for the CRC Committee or the ECtHR in future complaints of minors on ethnic profiling, this part aims to make a comparative analysis of IACHR, ECtHR and the CRC Committee's jurisprudence. Although the cases differ in discussed grounds of discrimination, the IACHR case mentioned discrimination based on the child's socio-economic status, the ECtHR case was on discrimination on the grounds of national origin, and the OPIC case was on racial or ethnic origin; they all revealed the child-specific perspective of these bodies. Moreover, the strengths and weaknesses in each approach will conclude what the standards set by these cases add to the protection of minority youth against ethnic profiling. Thus, it will be derived from this what a future child-specific case on ethnic profiling should look like and how international and regional standards can be used in practice.

3.4.2. The bodies

The CRC Committee, the ECtHR and IACHR aim to address human rights violations and provide access to justice but are all vastly different in nature. This varies from the geographical scope, mandate and methods or enforcement mechanisms. For example, the IACHR is a dual system that has a Commission that approves admissibility of cases, whereas the ECtHR is a single judicial institution that produces either a judgement or a decision on inadmissibility.¹⁰⁵ The judgements of the IACHR contain a list of remedies, that are later checked by the Court on compliance. The ECtHR specifies pecuniary damages, but no other remedies are ordered. States are under obligation to implement decisions.¹⁰⁶ The European decisions have been found to have a higher rate of compliance than the Inter-American Court's, but it has also been found that it is easier for States to comply with pecuniary damages as ordered by the European Court than the IACHR's additional list of remedies.¹⁰⁷ In contrast, the CRC Committee's views are not legally binding.¹⁰⁸ They could become binding if a Court would use them in a judgement.¹⁰⁹ Lastly, international human rights instruments are part of the *corpus juris* of the IACHR, next to their main legal source the American Convention of Human Rights (ACHR).¹¹⁰ The Court builds up their judgements using interpretations by other legal bodies, whereas the ECtHR does occasionally cite them but the Court's assessment does not rely heavily on them.¹¹¹ This thesis submits these differences do not limit the analysis, as the focus is on lessons that can be learned for a child-specific approach and does hold the nature or mandate of these bodies should change.

3.4.3. The comparison of cases

The three child-specific judgements have been selected on their relevance to ethnic profiling. Firstly, the IACHR case of *Villagran Morales et al.* was chosen as it was the landmark case on police misconduct against a particularly vulnerable group of children (street children). The Court found the Guatemalan

¹⁰⁴ *Villagran Morales (et al.) v. Guatemala.*

¹⁰⁵ Hampson et al. 2018, p. 162-163.

¹⁰⁶ Hawkins & Jacoby 2010, p. 43-44.

¹⁰⁷ *Ibid*, p. 44-45.

¹⁰⁸ Liefwaard et al. 2019.

¹⁰⁹ Bantekass & Oette 2013, p. 220.

¹¹⁰ Feria-Tinta 2014, p. 236-240.

¹¹¹ Voeten 2010, p. 547-576.

State responsible for the police killings of five youngsters, which amounted to a violation of, *inter alia*, articles 1 (obligation to respect rights), 4 (Right to life), 5 (humane treatment), 7 (personal liberty) 8, (fair trial), 19 (rights of the child), and 25 (judicial protection) of the ACHR.¹¹² Secondly, the ECtHR has had no case on ethnic profiling of a minor until now. However, there has been a case where a minor's right to non-discrimination was violated, which contained relevant findings for this analysis as children were treated differently because of their race or ethnic origin.¹¹³ In *D.H. and others v. Czech Republic*, racial segregation of Roma children in schools was addressed, which amounted to a violation of articles 14 (non-discrimination) ECHR and 2 Protocol No. 1 (right to education). Articles 3 degrading and inhuman treatment and 6 right to fair trial ECHR were inadmissible.¹¹⁴ Last, the CRC Committee has 33 views adopted under OPIC, of which only one case considered article 2 in the merits.¹¹⁵ This case was *A.E.A. v. Spain*, in which a boy with a Moroccan origin was discriminated based on ethnic origin as he was not immediately admitted to a school after gaining Spanish residency. The Committee found Spain had violated articles 2 (right to non-discrimination), 3(1) (best interests of the child) and 28 (right to education).¹¹⁶

In the case of *D.H.*, the ECtHR cited relevant international and regional human rights sources, such as the ECRI, ICCPR, ICERD, and the CRC.¹¹⁷ Articles 28 the right to education and 30 the right to culture of the CRC were cited, but no further support was given by referencing the Committee's guidelines. This would have connected well to this judgement, as it was emphasized the State failed its positive obligations towards this minority group.¹¹⁸ Moreover, the Court could have used the CRC Committee's recommendations as they have expressed the Czech Republic must take affirmative action in the case of Roma children; change societal attitudes to prevent discrimination in education.¹¹⁹ This would have emphasized the particular vulnerability of children. Although the ICCPR and ICERD also provide protection for minority youth, they are not child-specific yet cited more extensively than the CRC. Furthermore, the focus in the Court's assessment was on the minority factor but not in conjunction with age. It was mentioned States should protect the 'higher interest' of the child, equality in education and the Court recognized the importance of education for children.¹²⁰ This thesis submits, from a children's rights perspective, the vulnerability of *minors* belonging to a *minority* could have been emphasized in the judgement. Discrimination of minors requires increased protection by States as they have diminished access to their rights; it requires additional measures of action.

This need for increased protection of children from discrimination was recognized in the *Villagran* case. The Court considered the Inter-American Commission's findings of vulnerability due to socio-economic conditions and the fact that children have more difficulty attaining their rights.¹²¹ The Court also recognized a systemic pattern of aggression and discrimination of this vulnerable group by the police. This amounted to 'double aggression' as the State failed to prevent these children from living in poor

¹¹² *Villagran Morales (et al.) v. Guatemala*, para 253.

¹¹³ Klaas et al. 2020, p. 47; In *D.H. and others v. Czech Republic* the Court mentioned that individual behavior of state officers may not be intentional but rather the result of structural discrimination against a minority group.

¹¹⁴ *D.H. and others v. Czech Republic*, para 109 & 210.

¹¹⁵ In 5 cases where the complainant held there was a violation of the right to non-discrimination, article 2 was not found admissible. In three cases the claim was ill-founded, in one the domestic remedies were not exhausted and in one the Committee did not find it necessary to explain a violation under article 2. This analysis was made by the author from data through: <https://opic.childrightsconnect.org/crc-trends>.

¹¹⁶ *A.E.A. v. Spain*, para 12.8-12.9.

¹¹⁷ *D.H. and others v. Czech Republic*, para 59-100.

¹¹⁸ *Ibid*, para 183.

¹¹⁹ Concluding observations 2003 Czech Republic, para 67-68 & 28-30.

¹²⁰ *D.H. and others v. Czech Republic*, para 143 & 182.

¹²¹ *Villagran Morales et al.*, para 180-184.

conditions, which led to a violation of their right to life. The CRC was used to interpret the scope of the measures of protection under article 19. For example, articles 2 (non-discrimination), 6 (the right to life, survival, and development) and 37 (inhuman and degrading treatment/arbitrary arrest) were held to be violated and State obligations were mentioned under them. The Court also emphasized the educational and preventive role the State and its officers have in contact with children.¹²² This was based on the Commission's findings that the police did not receive training on how to interact with this particular group of (street)children.¹²³ The position of this research is that although the component of ethnicity did not play a role in the judgement, the State's positive obligations regarding a specific vulnerable group of children were recognized along CRC standards. Thus, this judgement provides relevant lessons on how to practice CRC standards for minority youth and police. However, the discrimination component could have been emphasized (or sustained) more, just as was done in the *D.H.* case above. Especially as street children are a marginalized group that is often vulnerable to multiple forms of discrimination.¹²⁴

Another group that is vulnerable to discrimination are children with an irregular status. In *A.E.A. v. Spain*, the CRC Committee found a violation of article 2 CRC, due to lack of access to education on the grounds of national origin and administrative status.¹²⁵ The Committee found *de facto* discrimination applied in this case and expressed the State did not have justification to make the differentiation and not enrol the child in a school for two years.¹²⁶ There was no mention of specific vulnerability of the child or depth in the findings on article 2. In that sense, the Committee could take note of both cases above on how to approach violations of non-discrimination and specify what positive obligations States should fulfil towards a vulnerable group of children. They have done this in Concluding observations, but this research contends their jurisprudence should also reflect this.¹²⁷ They did mention in their recommendations that the State of Spain should prevent this kind of discrimination from happening again in future cases.¹²⁸

In conclusion, different violations were addressed in these cases, but lessons can be drawn from how the non-discrimination principle was approached by the courts; some elaborated more on the vulnerability of the child to violations of this right. The ECtHR case showed a lack of focus on the specific vulnerability of children and recognition of special protection measures. They did cite the relevant CRC rights to the complaint but did not explain them further. This is a lesson they could learn from the *Villagran* judgment, where the relevant children's rights were elaborated extensively. In return, the IACHR can take away from the approach in *D.H.* that emphasizing the prohibition of discrimination from State officials towards vulnerable groups of children is essential. The CRC Committee can learn from both cases in how to address article 2; they could have discussed the article in a more intersectional way and recognized the vulnerability of children. They did not elaborate on how to take specific measures to prevent discrimination based on national origin. Ideally, a future case should have elements of all the cases discussed above, which shows the current jurisprudence that has set standards for children on discrimination needs to develop more to provide protection from ethnic profiling. This because it needs to be clear that all forms of discrimination against children impact their development and enjoyment of other rights. As already stated in the previous chapter, it is a violation that affects children disproportionately and States should ensure special protection measures are in place.

¹²² *Ibid*, para 191-196. This was based on the on the Beijing Rules and Riyadh Directives as there was no CRC General Comment No. 10 on juvenile justice.

¹²³ *Ibid*, para 183.

¹²⁴ CRC Concluding observations Guatemala 1996, para 9.

¹²⁵ *A.E.A. v. Spain*, para 11.5.

¹²⁶ *Ibid*, para 12.8.

¹²⁷ CRC Concluding observations of the Netherlands 2022, para 15d.

¹²⁸ *Ibid*, para 13.

3.5. Conclusion

The European legal framework has set standards on ethnic profiling, although not child specific. Similar to the international framework, stop and search by the police without a reasonable and objective justification, on the grounds of ethnicity, amounts to a violation of rights. They have found concern for police discretion and that States should apply objective justification narrowly and have very weighty reasons for differential treatment. The Court leaves a narrow margin of appreciation for States on ethnic discrimination. It even has been found to meet the threshold of degrading treatment under article 3 ECHR and States have positive obligations to combat bias against minorities in society. Furthermore, when there is *prima facie* proof of discrimination the burden of proof shifts to the State, instead of the individual, in cases of ethnic profiling.

This thesis submits following the Guidelines on child-friendly justice and the jurisprudence analysis that the above-mentioned standards should apply to children, but with an additional layer of protection. For them, the threshold should be lower to amount to a violation of rights; it should also matter how a stop and search is conducted. For example, if it is done in an age-sensitive manner, communicating clear reasons and rights. States should be held accountable if there are no measures of protection in place, like a uniform police assessment framework and a protocol that police can follow when dealing with children. States should also have an effective complaint mechanism available that is accessible for children. Lastly, the judicial system should be trained on how these standards can be used, especially in recognizing the intersecting forms of discrimination that children experience and the vulnerability of certain groups in a public space.¹²⁹ Below, the domestic implementation of the discussed international and regional children's rights protection standards will be analyzed.

¹²⁹ This was confirmed by *B.S. v. Spain*, para 56 & 62; Although not a child-specific case, the Court did recognize the intersection of race, gender and social origin and that the domestic Spanish Court in this case failed to recognize the vulnerabilities and thus failed to comply with article 14 and 3 ECHR.

Chapter 4 Case study of minority youth's access to rights in the Netherlands

4.1. Introduction

In this chapter, the Dutch legal framework for protection from ethnic profiling of minority youth will be reviewed against the international and regional framework set out above. This case study will show to what extent there is domestic implementation of the international and regional children's rights standards on ethnic profiling in the Kingdom of the Netherlands (the Netherlands). First, the applicability of international and regional law to the Dutch legal system will be discussed. Secondly, the relevant domestic law and practice will be analyzed to review if the Netherlands adheres to the international and regional framework to protect children from ethnic profiling and where it can improve. As these legal standards need to be accompanied by other measures, such as education, to be effective the analysis of signals from civil society, government bodies and children will show how the implementation gap can be closed.

4.2. The applicability of international and regional children's rights in the Netherlands

The impact of international and regional treaties has been significant in the Netherlands. For example, the CRC improved the legal status of children through Dutch jurisprudence.¹³⁰ However, it is left to judicial discretion whether a certain provision of the CRC (or other treaties) has a direct effect. This makes the Netherlands a moderate monist legal system.¹³¹ There is recognition of direct applicability of international treaties, with some restrictions following from article 93 of the Dutch Constitution. Here it stipulates that only those provisions of treaties that are "*binding on all persons by virtue of their contents shall become binding.*" Furthermore, article 94 reads that those international treaty provisions binding on all persons have priority over national law.¹³²

Thus, there is room for (judicial) interpretation of what international provisions are directly applicable. When looking closer at the relevant CRC articles for this thesis, there is inconsistent use of them in practice by judges. Even though the legislator acknowledged that articles 16, 30, and 37(b) have a direct effect, in practice articles 16 and 30 have not been explicitly recognized to have a direct effect and 37(b) has been applied inconsistently. It must be noted significant progress has been made to set standards on article 37 to guarantee rights in juvenile justice proceedings.¹³³ Article 2(1) has been acknowledged to be directly applicable, similar to article 14 ECHR and article 26 ICCPR.¹³⁴ Contrastingly, the ICERD has not always had the recognition of direct effect.¹³⁵

These international treaties are essential in protecting fundamental rights in the Netherlands, as there is no constitutional review according to article 120 of the Dutch Constitution. Thus, the significance of the ECHR and the Court's jurisprudence is noteworthy, as this has been recognized to have direct effect in the legal order.¹³⁶ As ECtHR decisions contain international treaties, such as the ICERD, ICCPR, and the CRC, there has been an influence in the Dutch legal system through the Court's case law.¹³⁷ So even though judges have the discretion to interpret provisions, standards derived from the international and regional framework on protection from non-discrimination should be directly applicable as they are

¹³⁰ Rap et al. 2020, p. 98.

¹³¹ Doek & Liefwaard 2015, p. 82.

¹³² De Zeeuw 2022 (monitoring and enforcement report) .

¹³³ Limbeek & Bruning 2015, p. 96.

¹³⁴ Pulles 2014, p. 10-23.

¹³⁵ OM 2019, p. 32.

¹³⁶ Chébtí 2014, p. 91-105.

¹³⁷ See Pulles 2014, p. 40.

in line with this principle in the Dutch Constitution. However, the Dutch legal system allows for inconsistent use of children's rights standards, which can lead to uneven implementation and legal inequality for minority youth.

4.3. The domestic legal framework for the protection of minority youth from ethnic profiling

4.3.1. The Dutch law

In domestic criminal and civil law, there is no specific prohibition on ethnic profiling and no child-specific rights to non-discrimination. This section will explore to what extent the domestic framework adheres to international and regional standards to protect minority youth from ethnic profiling in law and practice.

Firstly, article 1 of the Dutch Constitution stipulates that all people should be treated equally, and it prohibits discrimination on specific grounds, such as race or gender and extends this prohibition to 'any other grounds.' Although this also applies to children in the territory, it could be advisable to add a special clause or provision in the Constitution to embed their rights.¹³⁸ However, this thesis submits that as long as there is no constitutional review, this will not add value. It must be noted that in practice the police cannot act against such a value of the Constitution, and it is one of their core values.¹³⁹ Thus, to increase protection for minority youth from non-discrimination under this article, a child-specific constitutional clause could be added to better implementation of children's rights. It can also add symbolic value to make society more aware of children as rights holders.

Others relevant provisions to protect minority youth against ethnic profiling can be found in criminal law. Articles 137g and 429quater in the Dutch Criminal Code (DCC) prohibit intentional and unintentional discrimination for on-duty officers.¹⁴⁰ Race is the only mentioned ground in the first article and in the latter race, religion, belief, gender or sexual orientation are mentioned as grounds. Ethnicity is not mentioned explicitly, as it falls within the scope of race.¹⁴¹ The Netherlands adjusted discrimination articles in the DCC in 1971 to adhere more to the ICERD.¹⁴² However, the position of this thesis is that the articles lack adjustment to international children's rights standards, such as that age could be named as a ground.

Furthermore, the DCC and the Dutch Criminal Procedure Code (DCPC) contain sections for minors. The Youth Criminal Law (article 77) sets the age of criminal responsibility (age 12-18) and stipulates special protection measures for minors suspected of committing an offence. For the most part, the provisions under article 77 DCC adhere to CRC standards as laid down in articles 37 and 40 CRC.¹⁴³ For example, articles 77e and 77h also cover diversion measures, ensuring detention is a measure of last resort. Special procedural guarantees for minors are also codified in the Youth Criminal Procedure Code.¹⁴⁴ However, this thesis finds a child-specific provision with protection from arbitrary arrest is lacking. As police are the first contact for minors in the juvenile justice system, and the Youth Criminal Law does not aim to punish but to educate (and reintegrate) minors, increased protection is necessary to prevent children from falling into a system. Child-specific guidance for police officers is not sufficient to expect increased protection for minority youth from arbitrary stop and search checks (or arrest); this should be accompanied by the legal implementation of article 37(b) CRC. Moreover, no civil law

¹³⁸ Liefwaard & Doek 2015, p. 84.

¹³⁹ Politie 2020.

¹⁴⁰ Rodrigues & van der Woude 2016, p. 2296.

¹⁴¹ Kamerstukken II 1967/68, 9724, nr. 3, p. 4-5.

¹⁴² Kruize & Gruter 2020, p. 20.

¹⁴³ Liefwaard & Trotman 2020, p. 2.

¹⁴⁴ Articles 486-505.

provisions guarantee the child's right to non-discrimination or lay down special protection measures and positive state obligations for minority groups.

On the other hand, there is an extensive legal framework to provide police discretion. Although police need to have reasonable suspicion of a criminal offence based on facts (article 27 DCPC), no article stipulates any specific (procedural) guarantee for children that are suspects. According to article 2(2a) of the Police Act (PA), officers must uphold public order and aid citizens. Officers can demand identification if they deem it 'reasonably necessary' (article 8a PA). This applies to citizens from 14 years of age, as stipulated in article 2 of the Act on Identification. Neither of these Acts mentions special protection measures for minors or non-discrimination principles. Similarly, the 1994 Traffic Act provides police with discretionary powers. As laid down in article 160 (1b) of the 1994 Traffic Act, police can stop youth between 16 and 17 years old on a scooter and ask for identification without giving a reason.

Lastly, municipalities can have areas that are labelled as a security risk by the mayor, where preventive stop and search is possible.¹⁴⁵ This is stipulated in articles 50, 51 and 52(3) of the Weapons and Ammunitions Act, which does not contain special protection measures for the stop and searching of minors. They are mentioned in the prohibition of carrying heavy weapons in article 26. This thesis submits a section for minors is needed to embed child-specific protection measures to guide police conduct for these laws to adhere to international and regional standards. The procedure of a stop a search regarding children should be embedded in the legal framework, so police have a uniform and clear assessment criterion to use to limit their discretion when dealing with children.

4.3.2. Practice of legal standards

How the abovementioned framework is used in practice, and if international and regional children's rights standards are considered in judgements on ethnic profiling, cannot be analyzed, as no cases of minors on this subject have been before a Dutch Court. However, there has been one adult related case on ethnic profiling recently, that has used international and regional standards as mentioned in Chapter 2 and 3. Two other cases related to police discrimination were dismissed. These will be analyzed to give an insight into protection from ethnic profiling in general in the Netherlands.

Firstly, the case of *Amnesty International and others against the State of the Netherlands* shows how difficult it is to prove incidents of ethnic profiling.¹⁴⁶ This case was against the Royal Netherlands Marechaussee (Kmar), which is military police that does border controls revolving around nationality (MTV controls) with the aim to control immigration. For these checks of illegal entry, no reasonable suspicion is necessary.¹⁴⁷ This leaves discretionary room to base decisions on ethnicity. The Court decided there was no violation of article 1 Protocol 12 ECHR, as in general the Kmar has an objective and reasonable justification, and ethnicity can be a factor in decisions. The Court did acknowledge that there is a possibility that ethnic profiling can occur in individual cases, but that it does not happen on a structural basis, and they will not prohibit the use of ethnicity in these controls.¹⁴⁸ This research contends that this case is an example on how the Court interprets a case of ethnic profiling and how difficult it will be to prove for a citizen that there is no reasonable justification. As this is already complex for an adult, it begs the question of how it can be expected a minor will bring such a case to Court.

¹⁴⁵ See Rodrigues & van der Woude 2016, p. 2300.

¹⁴⁶ ECLI:NL:RBDHA:2021:10283.

¹⁴⁷ *Ibid*, para 3.6.

¹⁴⁸ *Ibid*, para 8.13-8.15.

Furthermore, it is questionable if the State is fulfilling its obligations under the international framework, as this showed that a prohibition of ethnic profiling is necessary by law and adequate safeguards should be taken to prevent it from happening. Although a legitimate aim may be found in decisions, if they are based on ethnicity, it violates non-discrimination principles. De Vries and Spijkerboer found the decision not to be in line with the ECHR and called this an example of structural discrimination through law.¹⁴⁹ The judgement did not prohibit ethnic profiling, but the case did have an impact; after the decision, the Kmar expressed they will not use ethnicity as a factor in their decisions anymore.¹⁵⁰

Two other cases related to police discrimination also show the difficulty of the burden of proof on citizens, especially minors. Rodrigues & van der Woude stated in their research in 2016, that there was no jurisprudence found on articles 137g and 429quater DCC that prohibit discrimination by police officers. In October 2021, a claim under these articles was dismissed by the Hague Court. Police officers were accused of alleged discriminatory remarks in a Whatsapp group chat after a video was shared of the assault of a 14-year-old boy. The Court found these remarks were not made in public or in office; they were private conversations (even though a work phone was used), thus there were no sufficient grounds for prosecution.¹⁵¹ In the reasoning, the Court admitted that the criminal investigation in 2018 found five members of the group to have made discriminatory remarks and these were acknowledged to be unfitting for officers in function. However, no mention was made of the fact that the remarks were made about minors. In another case regarding minors, the appeal was based on a procedural defect due to ethnic profiling. Youth was caught stealing a wallet and convicted. In the appeal, they claimed to be observed by the police because of their ethnicity, which constituted a procedural defect, but this got dismissed.¹⁵²

Lastly, it must be noted that next to the lack of hard law, the police have no soft law or guidelines on conducting stop and search with (minority) youth. They do have a document called 'Framework on professional controls', which explains in practical steps how to make decisions to stop and search with reasonable and objective justification and how to communicate with citizens.¹⁵³ Only 4 percent of the police were aware of the existence of this in 2020.¹⁵⁴ Minors should have been mentioned as they require a child-friendly explanation of their rights and reasons why they are stopped, as stated in the international and regional framework. The impact on the privacy of the child is more significant than that for adults. Furthermore, there is a Directive that the police can use for minors, but this does not mention non-discrimination or how to conduct stop and search with children; it merely stipulates children's rights standards for minors that are suspected of a crime.¹⁵⁵

4.3.3. A solid protection framework?

As shown above, the Dutch legal framework prohibits discrimination by police officers. However, there is no specific prohibition of ethnic profiling, nor is there increased protection for children. The Dutch legal framework does not contain child-specific non-discrimination provisions nor any children's rights standards on arbitrary arrest. The international and regional framework puts States under an obligation to prohibit ethnic profiling by law and shift the burden of proof on the State in cases where racial discrimination is presumed; the Netherlands does not adhere to these standards. This is especially important to protect children from arbitrary stop and search (article 37 (b) CRC), to protect their privacy

¹⁴⁹ De Vries & Spijkerboer 2022, p. 1-7.

¹⁵⁰ Tweede Kamer 2021.

¹⁵¹ ECLI:NL:GHDHA:2021:1962.

¹⁵² ECLI:NL:GHAMS:2014:1914.

¹⁵³ Politie 2020.

¹⁵⁴ Kamerstukken II 2020–2021, No. 1033.

¹⁵⁵ OM 2021.

(article 16 CRC) and the right to culture (article 30 CRC) so it does not amount to discrimination (article 2(1)). In legal practice in the Netherlands, it is difficult for citizens to prove ethnic profiling has occurred. How this will be for children remains to be seen. This thesis submits that for children, it will be challenging to bring a case to the HRC, as they must exhaust domestic remedies. As seen above, cases can easily get dismissed, and it will take time, money and energy before domestic remedies are exhausted.

As already stipulated by concerns of international and regional human rights bodies, large police discretion leaves room for arbitrary treatment. Especially for children this can have consequences, as they are more vulnerable in accessing their rights than adults. Children belonging to a minority have been acknowledged to have increased vulnerability in the public space, adding the fact that adolescence can be a source of discrimination makes minority youth a target for ethnic profiling. It can be concluded that legal change should be implemented to provide increased protection for minority youth from ethnic profiling. This will also result in more legal certainty and equality for children, as judges and police have guidance in their discretion to create a uniform approach to achieve equal treatment. Legal standards need to be accompanied by other measures like education to change enforcement practice, which will be discussed below.

4.4. A reality check

4.4.1. Introduction

It also needs to be explored if the Netherlands is taking other measures to fulfil positive obligations to prevent ethnic profiling of minority youth. First, the Concluding observations of the relevant human rights bodies will show the implementation gap of children's rights standards on ethnic profiling. Hereafter, qualitative research of academic literature, journals, reports, and websites will analyse the signals from civil society and government bodies on this topic supported by field research. The aim is to conclude where a possible implementation gap can be filled to improve the international rights of minority youth.

4.4.2. Concluding observations on the Netherlands

The CRC Committee called for urgent measures on non-discrimination in the 2022 Concluding observations. They were pleased with the installment of a National Coordinator against Discrimination and Racism, but mentioned persisting lack of access to child-friendly reporting mechanisms on discrimination.¹⁵⁶ Furthermore, the Netherlands is recommended to investigate individual non-discrimination cases in a child-friendly manner, research if there are enough measures taken against discrimination, create policy and awareness raising programs to address the root causes of *de facto* discrimination, collect disaggregated data, and provide mandatory training of judiciary, law enforcement and society on non-discrimination.¹⁵⁷

Where the CRC Committee shows no specific concern for ethnic profiling, the HRC does mention concern about a lack of anti-discrimination legislation and ethnic profiling by law enforcement, which confirms the abovementioned findings of the domestic legal framework. They recommend implementing the prohibition of discrimination on all grounds in legislation and specifically mention that article 27 DCPC and the Police Act should contain more rules on stop and search to adhere to the Covenant. Additionally, the Netherlands should have a mechanism to check police discretion in stop and search.

¹⁵⁶ There is a Dutch law that stipulates every municipality should have a discrimination reporting mechanism, yet it does not mention children in there; Municipal Anti-Discrimination Provisions Act.

¹⁵⁷ CRC Concluding observations 2022, para 10, 14-15.

The HRC also recommends training of police, mechanisms to monitor and collect data on stop and search and increasing ethnic diversity in law enforcement.¹⁵⁸

The CERD adds that the systemic nature of ethnic profiling is not recognized in the Netherlands and there should be legislation with an 'explicit prohibition' of ethnic profiling.¹⁵⁹ This also confirms the conclusion in the section of the domestic legal framework above. Furthermore, the CERD expressed concern about the continuing discrimination that ethnic minorities experience in Dutch society and recommended an intersectional law and policy approach that includes ethnic minorities' views.¹⁶⁰ Lastly, they note there is an underreporting of racial discrimination. They recommend legislative and administrative measures to make sure ethnic minority has access to effective remedies.¹⁶¹

These reporting mechanisms show what can be done in the Netherlands to improve fulfilling obligations to combat and prevent ethnic profiling. However, it must be noted that no child-specific approach is mentioned by any of them. The CRC Committee should provide these standards on this topic and the State obligations to support the Netherlands.

4.4.3. A domestic analysis

Most of the findings by the Committees are confirmed by the analysis of the documents below. As stated in the methodology in the first chapter, this paragraph contains a thematic analysis of the available reports (government and EU bodies, NGOs, and foundations), academic research, documentaries, and journals, on ethnic profiling of youth. Through the program Atlas, 109 quotes were gathered out of 32 documents and coded to establish patterns. These four patterns are discussed below.¹⁶²

Systemic discrimination

The systemic nature of ethnic profiling shows through the culture of discrimination inside the police. It is mentioned as a hierarchical organization, that excludes people based on beliefs, ethnicity, and other grounds. There seems to be a lack of awareness of the effect of discriminatory behavior. Recently, the government has also recognized ethnic profiling as a structural issue.

The far-reaching discretion of police leads to ethnic profiling, and although it has been underreported, it is said to be an extensive problem. Because of the lack of data and mainly research based on people's experiences, ethnic profiling is hard to combat. Police have been reported to express their individual prejudices, so there should also be a bottom-up change (from a societal level). However, it has been found imperative to create structural (or systemic) change as individual behavior is also influenced by that.¹⁶³

Lack of anti-discrimination policy and legislation

Overall, there is a lack of effective remedies; people note that experiences are not taken seriously and there is a lack of legal protection from ethnic profiling through anti-discrimination laws. For example, the

¹⁵⁸ HRC Concluding observations 2019, para 13-14 & 48-49.

¹⁵⁹ CERD Concluding observations 2021, para 15.

¹⁶⁰ *Ibid*, para 26 & 26.

¹⁶¹ *Ibid*, para 39-40.

¹⁶² As the signals were found in multiple documents, only numbers or a direct quote will be referenced. In the bibliography the section 'Thematic analysis' the documents can be found. The annex of quotes from Atlas is an Excel document of 66 pages that can be requested from the author.

¹⁶³ Landman & Sollie 2018, p. 71.

recent report of the Dutch Senate notes a lack of clear legal standards; anti-discrimination legislation needs to be implemented in the Police Act.¹⁶⁴ This confirms the legal analysis made in this thesis. Although it must be noted the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance mentioned the formal commitment to non-discrimination through legislation of the Netherlands is 'impressive', and it is the enforcement that is lacking.¹⁶⁵ However, as the legal analysis of the domestic framework above shows, there are no principles of non-discrimination to be found in the Police Act whereas they have a large discretion according to this law. Nor is there a specific prohibition on ethnic profiling (as prescribed by the international framework) or special child-specific provisions on non-discrimination. Thus, this thesis submits that there is room for change in the legal framework, which should be complemented by change in policy and practice. Police should receive education and training on clear guidelines that are reviewed for accountability.

There is also a lack of attention to the perspective of citizens, as there is a focus on truth finding and protecting public order; the burden of proof in ethnic profiling cases lies on the victim. The Dutch National Ombudsperson has expressed that the burden of proof should be on the State from the beginning; they need to prove that there was no breach of the non-discrimination principle.¹⁶⁶ Although this goes a step further than the earlier mentioned shifting of the burden of proof as found by the European Court in the *Timishev* case, the reversal of the burden of proof could be an extra protection layer for children that is needed in racial discrimination cases.

Lastly, the experience of citizens should be central and through this the police should establish a bond of trust for the legitimacy of the State. Police intervention should be aimed toward this instead of effectivity. This is a complex issue to address as police represent the government, and the latter also has security policy aimed at effectiveness and result.

Minority youth

Only a few of the analyzed documents were about ethnic profiling of youth, but most available data is adult focused. One research mentioned that only 94% of the youth between 16 and 20 that experienced discrimination would report it.¹⁶⁷ The reasons youth give for not reporting are: not aware of the existence of institutions where they can report it and they feel it will not matter.

The research that does exist showed that adolescent boys with a migration background have higher chances of being stopped and searched by police, and registration of minority youth is three times as high than that of youth with only a Dutch background.¹⁶⁸ Police stops are targeted at young people in Europe in general; 21% of 16-29-year-olds were stopped in 2021 compared with 6% of people above 65. Most young people stopped while on foot in the Netherlands were of North African descent and asked general questions or for their ID.¹⁶⁹ Control Alt Delete and Children's Rights Collective have also mentioned concerns about signals they have gotten from ethnic profiling of youth. A specific case was highlighted where police detained a crowd of playing minority youth (15 and 16 years old) with police dogs and handcuffed them, which did not lead to a formal complaint.¹⁷⁰ Furthermore, the pandemic

¹⁶⁴ Eerste Kamer 2022, p. 22.

¹⁶⁵ Human Rights Council 2020, para 7 & 15.

¹⁶⁶ Nationale Ombudsman 2022, p. 64.

¹⁶⁷ KIS 2022.

¹⁶⁸ Bezemer & Leerkes 2021, p. 55.

¹⁶⁹ FRA 2021, p. 7-16.

¹⁷⁰ Kinderrechtcollectief & Rutu Foundation 2020, p. 17-18.

disproportionately affected policing of youth of a minority background; more fines were given and stops, and searches conducted.

Lastly, the socio-economic status of minority youth is mentioned; the neighborhoods they live, their access to public resources, all affects their chances of contact with the police and increases the risk of ethnic profiling. Another factor that adds to stigmatization is that research shows the overrepresentation of minority youth in the juvenile justice system. Solutions that are mentioned are awareness raising of rights amongst parents and educators, making reporting accessible, improving the socio-economic situation and access to education for minority groups. Positive and child-friendly community policing can also help establish bonds with local youth. This thesis submits this is especially important as the impact on youth and their development is significant.

Positive signals

There have been administrative initiatives that make an effort to combat discrimination in general and establishing trust with youth. The government has established a State Commission against Discrimination and Racism in May 2022, which will research discrimination and racism in Dutch society to make policy more effective. They will also focus on ethnic profiling.¹⁷¹ This thesis submits that this program should also develop a specific strategy focused on youth.

The National Ombudsman has also contributed to research and handled complaints on ethnic profiling, whereas the Children's Ombudsman has not. The police have a program to combat discrimination (Police for everyone), which aims to increase diversity within the police and improve the professionalism of police checks. However, no specific guideline is given on how to deal with minors, nor are they mentioned anywhere.¹⁷² There is also an app on police work telephones to register every stop and search, which supports professional controls.¹⁷³

Generally, policy measures for minors seem to be lacking. However, there is a program called Police Kids, where parents and children can help with police work.¹⁷⁴ This thesis submits that something similar could also work for adolescents to establish a bond of trust. Additionally, the police have been experimenting with giving minors a 'reprimand' instead of taking them in or arrest after they have found a minor to be suspected of an offence after a stop and search; in the evaluation there is nothing about discrimination or child-friendly communication recommended.¹⁷⁵ This thesis submits that giving police more power to sanction should be accompanied by clear guidelines and safeguards for children. This is problematic in general and there should be domestic legislation and guidelines first to support all these initiatives. In the case of ethnic profiling, it is advisable to establish a top-down approach accompanied by bottom-up initiatives.

4.4.4. Field research

This research was conducted with semi-structured interviews in person, except for the one with the expert due to Covid. It must be noted that these indicative findings do not have a truth-finding aim to establish whether the focus group of minority youth is indeed disproportionately affected by ethnic profiling. It is acknowledged that the focus group is too limited, and other groups such as girls or youth

¹⁷¹ Staatscourant 2022, 11349.

¹⁷² Politie 2020.

¹⁷³ De nationale ombudsman 2022, p. 8.

¹⁷⁴ <https://www.politie.nl/onderwerpen/politiekids.html>.

¹⁷⁵ Beijerse et al. 2022.

with a Dutch background would also have to be checked. The aim of these indicative findings is merely to support the desk research in the paragraph above and to give mainly youth themselves a chance to participate in this research and share their experiences. As stated in the beginning of this thesis, it is imperative to learn from these lived experiences of youth, and they will be taken into account in the recommendations. Firstly, the interview with an expert from civil society will be set out, and then the essential parts of the interviews with minors.

Experts

The Dutch organizations that have been approached for this research are Defence for Children the Netherlands, the Children's Ombudsman, the Youth Helpline (Kindertelefoon), and the Human Rights Board (College voor de Rechten van de Mens). These organizations all mentioned a lack of notifications on ethnic profiling of youth, and thus could not answer interview questions.

Control Alt Delete does get a few notifications a year about this. They are focused on the eradication of ethnic profiling and committed to honest and effective law enforcement.¹⁷⁶ The person that was interviewed is the co-founder, Jair Schalkwijk, who has worked there for ten years. The organization conducts research and supports people that have experienced abuse of power or violence by police and ethnic profiling. They sometimes support people in filing a complaint and primarily draw lessons for law enforcement from these experiences. Control Alt Delete is a critical partner for politicians and police to improve policy.

Schalkwijk mentioned they frequently receive notifications about ethnic profiling, but not very many about minors. The ones they receive are mostly from parents with the cooperation of the minor and more boys than girls. The examples he gave concern boys playing on the street and getting checked for an ID, but most of the time police officers do not explain properly why. It is often the word of the individual against that of the officer; examples where boys claim they were not committing any offence, but police say they have done a lawful check. Another notification was about a 13-year-old boy that was stopped and searched for a weapon because he fit a general description, the parents were notified by their child and no contact was sought with them. This is difficult for parents, as they should have been involved and the impact of a stop and search on the child is immense. Police do not always make an effort to contact parents. Most parents do not want to file a report as they do not trust the police and since the Dutch childcare benefits scandal there is great distrust in authorities in general.¹⁷⁷

Control Alt Delete does mention recently the Dutch government seems to pay more attention to ethnic profiling (also through research), but substantial change has still not occurred. Their advice is to limit police discretion, and systemic and individual change of police is necessary. Mainly proactive control and no checks and balances system need restructuring. They also mention for minors there is an extensive infrastructure of local youth organizations and youth workers. The only difficulty there is that they are a chain partner of the police, so if they are critical of them, it could affect government funding.

¹⁷⁶ Control Alt Delete 2022.

¹⁷⁷ NJI 2022; Parents had to pay back their benefits they had gotten, sometimes over small administrative mistakes, and most were in severe debt. This also led to children being placed in alternative care. This mainly happened to families with a migration background and has been acknowledged to be due to systemic racism in the Tax office.

Youth

These interviews were conducted along the ethical research guidelines mentioned in the introduction. They took place in two days through a youth foundation in The Hague under the guidance of youth coordinators in the community center where they gather daily. This center organizes youth activities and aims to contribute to their neighborhood. A group of 20 male minors was interviewed in a group setting and four boys were interviewed individually. The ages varied from 12 to 18 years old, and the coordinator gave permission for the group interview (he contacted parents if available). They are all Dutch with a migration background and most have a North African background. All interviews are anonymous, and on request, the center is not named, as they do not want to harm the relationship with the local police or municipality.

Almost all boys feel stigmatized by the police because of their migration background. Additionally, they feel powerless to do anything about it and are unaware that they have rights. The boys feel they have nowhere to go, as parents will believe the police over them, and they lack trust in authorities or youth workers. They mention incidents where they play football and hang around on the street and get asked for an ID, whereas the group of girls next to them or other people do not. They also mention the frustration when they are stopped and searched and ask for an explanation but do not get one; it mostly comes down to responses from police such as: "cooperate". They are also scared that police will use force or abuse their power in other ways and lack trust in police. If something happened to them on the street, they would never go to the police. When they were asked how to describe the police, a boy of 13 years old said:

"As my last option."

Some boys mention stories about running away from the police not to show their identification (ID). Because police get notifications and if you show your ID, they will register you in the system and match you with that notification. The older boys said that they always get stopped when on a scooter, some of them have the feeling this has to do with age and others with ethnicity. They mention that when the police pull up their name with an ID check, their prior registrations will show. The police do not have to prove every registration according to them. One of the 17-year-old boys said he had been registered many times but linked to notifications that had general descriptions (like Moroccan boy with black coat) and did not do anything.

Most of the boys know what ethnic profiling is and one boy of 14 years old said:

"Police will act on their prejudice and that's always going to apply more to people of colour."

The stories relating to ethnic profiling stem from the feelings the boys have about being treated or seen differently than their peers with a Dutch background. Two boys of sixteen mention they think the police find reasons too quickly to stop and search; there does not need to be evidence, a police officer will give an argument of nuisance and you can be stopped and searched. A boy of 16 years old said:

"So, I said to that officer, Sir, do you have an objective reason to hold me up? I thought I'd just ask for once. The officer literally told me: What reason shall I come up with?"

Only a few boys mention discriminatory comments made by police, which they also have noticed happen to them in school or other areas of society. The group agrees that Moroccan youth has a huge stigma, especially induced by the Dutch media. In the news, the focus is always on youth with a Moroccan

background in a negative manner. They believe the media can play a role in fighting stereotypes and this needs to happen because discrimination will not just go away by making laws.

Other solutions mentioned by the group are making laws about what police can and cannot do and being able to vote. This is especially important to some adolescent boys as they say:

“We need to abide by the rules, but we cannot participate in making them.”

Lastly, they believe solutions lie in community building and education with the police about children’s rights. But limiting police discretion and more positive images of minority youth in the media are the key to change in ethnic profiling, according to the youth.

4.4.5. Protection in practice?

As could be derived from the international and regional children’s rights framework on ethnic profiling, States are obligated to implement policy measures next to legal ones and take affirmative action on non-discrimination. The research above shows that the Netherlands is taking action to combat racism. However, it is mainly adult-focused. There is also a lack of disaggregated data on ethnic profiling. Special protection measures should be taken to prevent discrimination from happening to vulnerable groups, such as minority youth.

The main issue from this analysis above is the lack of police guidelines on how to treat and communicate with children to prevent discrimination. Especially, the experiences of youth and the lack of trust in the police show how important this is. According to the CRC the police must have an educational role in their behavior towards children, not punitive. The experiences and notifications of youth and experts show that much can be improved here. Communication and extra explanation towards minors on why they are stopped, and involvement of parents seem critical. For this training and education of law enforcement on children’s rights is imperative, but also awareness raising in society.

Another change that will make youth feel safe is limiting of police discretion. This thesis submits, especially as the impact on children of a stop and search can be great that it should be done in a child-friendly manner and under clear law and guidelines, so there is no risk of misunderstanding or discrimination. The last effort that should be made, as the international and regional bodies have stipulated, is changing societal attitudes to combat ethnic profiling. This should begin with a systemic change; police and politics will influence society by setting an example through accountability, diversification, and making sure other actors (such as media) are accountable for discrimination. These changes would improve CRC adherence of the Netherlands in practice.

4.5. Conclusion

The Netherlands has made progress on adhering to international children’s rights standards. However, critical reflection on the discrimination laws and the protection they provide remains imperative. It can be concluded that the Netherlands can improve adherence to the international and regional standards of protection of minority youth from ethnic profiling. The legal framework does not have a specific ethnic profiling prohibition nor a child-specific discrimination law. While law provides a large police discretion to uphold public order, the framework lacks legislation to provide clear assessment rules to guide police stop and search.

In the practice of law, judges do not consistently apply the provisions of the CRC, ICCPR, or ICERD. They have the judicial discretion to do so, which provides legal uncertainty. As no child-specific cases

have come before a domestic court, it is difficult to say how provisions will be treated and if they provide enough protection. What can be concluded is that cases of ethnic profiling that have come before a Court put a heavy burden of proof on citizens, while the international and regional framework has suggested to shift this to the State in cases where discrimination is established. This thesis submits that for children the reversal of the burden of proof can add an extra layer of protection. It also is debatable if Dutch Courts adhere to the other set standards of the ECtHR (that have a direct effect), as the 'very weighty reasons test' to differential treatment was not applied in the Kmar case.

Finally, the signs of Committees were confirmed by the research on social reality. Constructive changes and awareness are noticeable in fulfilling positive obligations in combating discrimination. However, substantial change in ethnic profiling in practice has yet to come. This case study has shown how difficult it is to enforce the international and regional Conventions, and how underexposed the children's rights perspective remains. Minority youth voiced no awareness of their rights and feelings of powerlessness against state officers. They lack trust in law enforcement, which is damaging to the rule of law. The police should invest in building bonds of trust so that law enforcement will be more effective. The lived experiences with ethnic profiling of children seem different from adults in that they feel they have nowhere to go with their stories and will not be taken seriously. This also links to the lack of youth participation in political processes (like voting) and a lack of knowledge on their rights or how to access them. This shows from the fact that there is a lack of child-specific case law on ethnic profiling. Youth with a migration background mentioned feeling stigmatized in general in society because of their ethnicity.

It will take effort from the Treaty bodies, the State, and society, to bridge this implementation gap. For the Netherlands to improve adherence, legal change, clear child-friendly police guidelines and awareness raising policy on ethnic profiling as a children's rights issue should be implemented. Not only individual police training on child-friendly communication and conduct should be promoted, but also a systemic change is necessary. This means the State should limit police discretion from the top down, which should be accompanied by bottom-up initiatives that rebuild trust between minority youth and authorities so police will not be their "*last option*" anymore.

5 Covering up: a child's right to protection from ethnic profiling

5.1. Conclusions

This thesis started with the words 'Blue bias' and ended with 'last option', which perfectly describes the perception of minority youth of the police. It also gives a peek into the answer to the main research question, reiterated below, that will be answered in this conclusion to provide recommendations for the CRC Committee and the State of the Netherlands.

To what extent is minority youth protected from ethnic profiling by the international and regional children's rights framework in the Netherlands?

First, the analysis of the international children's rights framework proved it aims for adequate protection from all forms of discrimination and the ICCPR and ICERD recommend States to explicitly prohibit ethnic profiling. However, no specific article in these Conventions prohibits it, nor does the CRC. The latter seems to provide comprehensive State obligations to protect minority youth from ethnic profiling, such as articles 2(1), 16, 30, and 37(b). The Committee has not given guidance to this specifically on ethnic profiling, which is what the other Treaty bodies do add to the children's rights framework. The HRC has set clear standards in prohibiting ethnic profiling under article 26 ICCPR and the CERD has also made specific State recommendations in a General Comment on ethnic profiling. It must be noted that these bodies lack a children's rights approach.

Under the international children's rights framework States have an obligation to implement national laws that reflect the non-discrimination principle, the child's right to privacy, culture, and lawful police treatment. Police need an objective and reasonable justification to conduct a stop and search but need to be aware of child-friendly explanations and methods. The proportionality test should be applied stricter when it comes to minors. States should also provide youth with child-friendly complaints mechanisms, train police and judiciary on children's rights standards, and combat discrimination and socio-economic marginalization of minority youth in society. Although there are monitoring mechanisms in place, the weakness of these bodies lies in the lack of enforcement powers to ensure state compliance. Lastly, it remains to be seen if in cases of ethnic profiling minority youth will be able to find access to justice in front of a human rights body, like the HRC. The CRC Committee would be more favourable to treating a child-specific case, but the Netherlands has yet to ratify the OPIC.

Second, the analysis of the regional European legal framework shows how mainly the ECtHR adds to this international framework by jurisprudence on ethnic profiling. From this, it follows that States should have very weighty reasons for differential treatment and the Court leaves a narrow margin of appreciation for States on ethnic profiling. Additionally, in cases of ethnic profiling, the burden of proof should shift to the State when racial discrimination is presumed from the facts. Although these standards apply to children, they are afforded an extra layer of protection as derived from the jurisprudence analysis and the Guidelines on child-friendly justice, and States should be held accountable if this is not in place. Police stop and searches should almost be treated like a measure of last resort, and if used, they should be conducted in an age sensitive manner regarding communication. Extra measures of protection for children should be in place, such as a clear uniform assessment framework and training of children's rights standards for police and judiciary. Lastly, effective and child-friendly complaints mechanisms should be established. In the regional framework, there could be more focus on the children's rights perspective on protection from ethnic profiling.

Third, the case study of the Netherlands on the domestic implementation of the international and regional children's rights standards shows the difficulty of implementation and enforcement. Although

progress is noted in the Netherlands on adhering to international children's rights standards, there is a lack of a children's rights perspective in law, policy, and education especially on ethnic profiling. There is room for improvement in creating legal protection for minority youth in criminal and civil law and limiting police discretion or at least ensuring they have a uniform child-specific guideline for proactive controls and training on safeguarding children's rights. Furthermore, the judiciary should apply the CRC more consistently to provide legal certainty, and secure equal treatment. The burden of proof should not be on children in cases of ethnic profiling, as they already underreport because they think they will not be taken seriously or lack trust in authorities. Steps can be made to make filing a complaint more accessible and get minority youth involved in making law and policy to combat ethnic profiling. Because the participation of youth and learning from their lived experiences is key for States to ensure the enjoyment of children's rights. Furthermore, disaggregated data collection on ethnic profiling is necessary, to create intersectional policies or bottom-up programs. Lastly, systemic and societal change are imperative to change attitudes and combat discrimination.

In conclusion, there is protection from ethnic profiling in the international and regional children's rights framework, but it remains difficult to implement into a domestic context. This is partly because ethnic profiling remains underexplored from a children's rights perspective by the treaty bodies and also because a state can improve in adherence to children's rights. In the case of the Netherlands, there is child-specific legal protection in many areas (like juvenile justice), but for ethnic profiling, it can be stated that a children's rights issue is uncovered. This needs to be addressed by the State with the help from the Committee and Dutch society, which the recommendations below and findings in this thesis aspire to contribute to.

5.2. Recommendations

Below a list of recommendations will be set out for the CRC Committee, other treaty bodies and the State of the Netherlands on how to improve implementation of international rights of minority youth regarding ethnic profiling. Finally, a practical framework and guidance for the police to conduct child-friendly stop and search will be given.

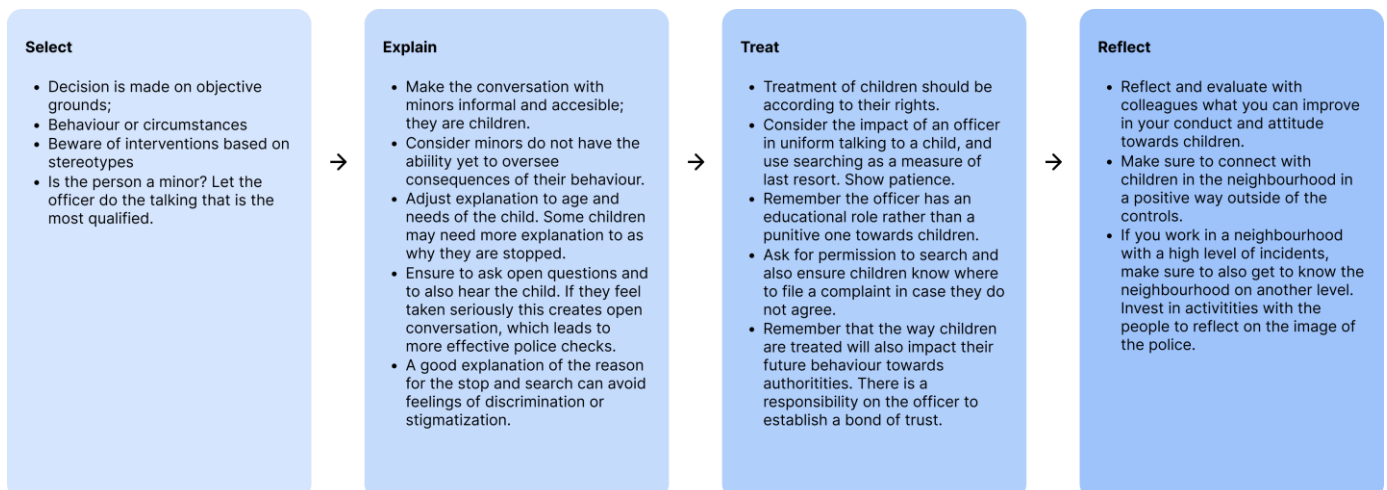
The CRC Committee

- Address ethnic profiling in the Concluding observations.
- Draft a Joint General Comment with the CERD or HRC on discrimination, in which there is a section on children and the police. Here child-specific guidance should be given on the protection of minority youth from ethnic profiling, following the CRC articles in this thesis.
- Let children participate in the drafting of this General Comment.
- Ensure to address discrimination through an intersectional lens in their views.
- As the guidelines and jurisprudence that the Committee produced are not child-friendly, they should create a webpage, podcast, or an app where information is diffused on children's rights and developments in this area. This will also contribute to providing children with more access to justice.
- The HRC and the CERD can also refer in their General Comments to the CRC to make children's rights more visible.

The Netherlands

- Ratify the CRC OPIC to extend children's access to justice.
- Draft child-specific legal protection from discrimination and limit police discretion when dealing with children. Train judiciary on these standards to provide legal certainty for children.
- The recently installed Coordinator against Discrimination and Racism must also have a specialized team that will ensure disaggregated data collection on children and their perspective (also of minority groups) will be considered in future policy.
- Ensure police have a uniform guideline on conducting child-friendly stop and search and make police training on children's rights mandatory. Additionally, a policy should be designed to induce systemic change to change the individual attitudes of officers.
- Instead of making a complaints office on discrimination in every municipality for children more accessible, ensure a helpdesk at schools or community centres where children can file a complaint on ethnic profiling (or other forms of discrimination) and be provided with advice about their rights.
- Dutch civil society could focus more on awareness raising that ethnic profiling can be a children's rights issue. They should consider using strategic litigation as a tool to force legal standards on ethnic profiling for children or induce change in police conduct.

The police: child-friendly professional control model¹⁷⁸



¹⁷⁸ This child-friendly version is based on the existing 2020 Guidelines of proactive police controls (Framework on professional controls).

ANNEX I**Interview Experts**

1. How long have you been working for the organization?
2. What does your job entail?
3. How would you define ethnic profiling?
4. Have you received reports from minors about ethnic profiling?
5. How often do you receive notifications?
6. Were there any differences or similarities in the reports?
7. Have you received reports from parents about ethnic profiling?
8. How often do you receive notifications?
9. Were there any differences or similarities in the reports?
10. What do you do with the notifications?
11. Are there also positive signs you hear of protection given by the Dutch police or other government agencies against ethnic profiling?
12. Is the government of the Netherlands doing enough to protect children against ethnic profiling?

ANNEX II

Interview boys

1. What is your name and how old are you?
2. Where do you live?
3. Which school do you attend?
4. What do you want to be when you grow up?
5. Do you know what discrimination is?
6. Have you ever experienced it yourself?
7. Have you ever had contact with the police?
8. What was that experience like and was there someone you could contact?
9. Do you know what children's rights are?
10. Do you think these rights are protected in your country? Do you have any suggestions for improvement for the government?

ANNEX III**Consent form**

For the academic research *Blue Bias: An international children's rights-based approach to ethnic profiling of minority youth in the Netherlands*, it is necessary to protect your privacy. Therefore, I need your consent.

Furthermore, I want to ensure that I have sufficiently informed you about the purpose of the research and the benefits of your contribution. As I explained in prior conversation(s), my research aims to analyze the extent to which minority youth are protected from ethnic profiling by international and regional child rights frameworks in the Netherlands. To support my findings of the legal analysis, I will also collect data from interviews with young people and experts working in the field of children's rights and discrimination. You will not receive any financial compensation for your participation. You will contribute to advancing children's rights with your participation since this is the first study focused on this topic from a children's rights perspective.

What data is being used?

I will conduct a half-hour anonymous interview of 10 questions. I will only note characteristics (with your consent) such as age. Personal data that can identify you will not appear in my thesis. You can choose between an audio recording, or I can take notes. When I take notes, I will summarize your answers immediately. With an audio recording, I will transcribe the interview later. The recordings will be deleted in 3 months from the date you sign the form.

Please choose what you consent to:

1. Audio recording: YES/NO
2. Notes: YES/NO

What if I change my mind?

If you change your mind, you can send an email before the end of July 2022 to with a short message stating that you do not want your interview to be included in the investigation. Thank you for your time and participation.

Date, place, and signature for informed consent¹⁷⁹:

¹⁷⁹ In the case of a minor: the signature of the parents or guardian is needed (unless the young person is 16/17 years old).

Bibliography

- Aasgaard, I. & Langford, M. (2022). Policing. In Langford, M., Skivenes, M., & Søvig, K. H. (Eds.), *Children's Rights in Norway: An Implementation Paradox?*, p. 202-221. Oslo: Universitetsforlaget.
- Abramson, B. (2008). Article 2: The right of non-discrimination. In Alen, A., Vande Lanotte, J., Verhellen, E., Ang, F., Berghmans, E. & Verheyde, M. (Eds.), *A commentary on the United Nations Convention on the Rights of the Child*, p. 1-149. Leiden: Koninklijke Brill NV.
- Amnesty International (2020). Policing the pandemic: Human Rights violations in the enforcement of Covid-19 measures in Europe. <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>.
- Anghie, A. (2005). Francisco de Vitoria and the colonial origins of international law. In *Imperialism, Sovereignty and the Making of International Law. Cambridge Studies in International and Comparative Law*, p. 13-31. Cambridge: Cambridge University Press.
- Angioi, S. (2019). Ethnicity, race and minorities in international law. In Caracciolo, I. & Montuoro, U. (Eds.), *Protection of cultural and religious minorities*, p. 3-28. Torino: G. Giappichelli Editore.
- Appelman, J., Dirkzwager, A. & van der Laan, P. (2021). Kenmerken van justitiabelen: Een systematisch literatuuronderzoek. Amsterdam: Nederlands Studiecentrum Criminaliteit en Rechtshandhaving. https://nscr.nl/app/uploads/2021/03/DJI_Kenmerken-van-justitiabelen_rapport_20210104.pdf.
- Arts, K. (2014). Twenty-five years of the United Nations Convention on the Rights of the Child: Achievements and challenges. *Netherlands International Law Review*, 61(3), p. 267-303.
- Asscher, J. J., van den Brink, Y. N., Creemers, H. E., Huls, E., van Logchem, E. K., Lynch, N., & Rap, S. E. (2020). De strafmaat voor jeugdige daders van ernstige gewelds-en zedenmisdrijven in internationaal perspectief.
- Bantekass, I. & Oette, L. (2020). *International Human Rights Law and Practice*. Cambridge: Cambridge University Press.
- Besson, S. (2005). The Principle of Non-Discrimination in the Convention on the Rights of the Child. *The International Journal of Children's Rights*, 13(4), p. 433-461.
- Besson, S. & Kleber, E. (2019). Article 2: The right to non-discrimination. In Tobin, J. & Alston, P. (Eds.), *The UN convention on the rights of the child: a commentary*, p. 41-72. Oxford: Oxford University Press.
- Beijerse, J., Fischer, T., Guldener, C., Postma, L. & Weerman, F. (2022). De Politieprimande voor minderjarige first offenders van lichte feiten: Evaluatie van de landelijke Politieprimande. Rotterdam: Erasmus School of Law. https://nscr.nl/app/uploads/2022/06/Evaluatierapport_pilot_politieprimande_voor_minderjarigen.pdf.
- Bezemer, W. & Leerkes, A. (2021). Oververtegenwoordiging verder ontcijferd: Een kwantitatief onderzoek naar sociale verschillen in verdenkingskans en zelfgerapporteerd crimineel gedrag onder jongeren in Nederland. Den Haag: Sdu Uitgevers. <https://www.politieenwetenschap.nl/publicatie/politiewetenschap/2021/oververtegenwoordiging-verder-ontcijferd-369/>.
- Boon, A., Van Dorp, M. & De Boer, S. (2018). Oververtegenwoordiging van jongeren met een migratieachtergrond in de strafrechtketen. *Tijdschrift voor Criminologie*, 60(3), p. 268-288.
- Bouabid, A. (2018). De Marokkanenpaniek; een geïntegreerde morele paniekbenadering van het stigma 'Marokkaan' in Nederland. Rotterdam: Erasmus Universiteit.
- Braun, V. & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative research in psychology*, 3(2), p. 77-101.

- Bruning, M., van den Brink, Y., & Punselie, E. (2020). *Jeugdrecht & Jeugdhulp*. Den Haag: Sdu Uitgevers.
- Çankaya, S. (2015). De politieke surveillance van ras en etniciteit. In Moor, L.G., Janssen, J., Easton, M. & Verhage, A. (Eds.), *Cahiers Politicestudies: Etnisch profileren en interne diversiteit bij de politie*, p. 13-33. Antwerpen/Apeldoorn: Maklu.
- Cain, A. C., Wijdenbosch, D. & Legêne, S. (2017). Uitsluitingsmechanismes van mensen van Afrikaanse afkomst in Nederland: Wat is erover bekend?: Een quick scan van de literatuur. Amsterdam: VU Amsterdam.
- Cantwell, N. (2016). Are children's rights still human? In Invernizzi, A. & Williams, J. (Eds.), *The Human Rights of Children*, p. 55-77. London/New York: Routledge.
- Control Alt Delete (2022). Over ons. <https://controlealtdelete.nl/over-ons>.
- Council of Europe (2012). Human Rights of Roma and Travellers in Europe. Strasbourg: Council of Europe. <https://rm.coe.int/the-human-rights-of-roma-and-travellers-in-europe/168079b434>.
- Chébtî, M. (2014). In WB Bundel, Rechterlijke toetsing aan eenieder verbindende internationale verdragsbepalingen. *Wetenschappelijke Bijdragen*, p. 83-124. Den Haag: Boom Juridisch.
- Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43(6), p. 1241–1299.
- Defence for Children (2018). Jaarbericht Kinderrechten Nederland 2018 in samenwerking met UNICEF. Den Haag/Leiden. https://www.kinderrechten.nl/assets/2018/06/DFC-18-Jaarbericht_TOTAAL_WT_LR.pdf.
- Doek, J. (2018). The Human Rights of Children: An Introduction. In Sloth-Nielsen, J., Kilkelly, U. & Liefwaard, T. (Eds.), *International human rights of children*, p. 1-27. Singapore: Springer.
- Duyvendak, J. W. & Scholten, P. (2012). Deconstructing the Dutch multicultural model: A frame perspective on Dutch immigrant integration policymaking. *Comparative European Politics*, 10(3), p. 266-282.
- European Commission (2017). Data collection in the field of ethnicity: Analysis and comparative review of data collection practices in the European Union. Luxembourg: Publications Office of the European Union. doi:10.2838/447194.
- Faulkner, E. A. & Nyamutata, C. (2020). The Decolonisation of Children's Rights and the Colonial Contours of the Convention on the Rights of the Child. *The International Journal of Children's Rights*, 28(1), p. 66-88.
- Fenton-Glynn, C. (2021). Conclusions: The achievements of the Court in the field of children's rights. In *Children and the European Court of Human Rights*, p. 393-400. New York: Oxford University Press.
- Feria-Tinta, M. (2015). The CRC as a litigation tool before the Inter-American System of Protection of Human Rights. In Liefwaard, T. & Doek, J. (Eds.), *Litigating the Rights of the Child*, p. 231-248. Dordrecht: Springer.
- FRA (2018). Handbook on preventing unlawful profiling today and in the future: a guide. Luxembourg: Publications Office of the European Union. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-preventing-unlawful-profiling-guide_en.pdf.
- FRA (2022). Handbook on European law relating to the rights of the child. Luxembourg: Publications Office of the European Union. https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2022-handbook-child-rights_en.pdf.
- Gerards, J. (2017). The Margin of Appreciation Doctrine, the Very Weighty Reasons Test and Grounds of Discrimination. In Balboni, M. (Ed.), *The principle of discrimination and the European Convention of Human Rights*. Editoriale Scientifica, Forthcoming. <http://dx.doi.org/10.2139/ssrn.2875230>

- Graham, A., Powell, M., Taylor, N., Anderson, D. & Fitzgerald, R. (2013). Ethical Research Involving Children. Florence: UNICEF Office of Research - Innocenti. <https://childethics.com/wp-content/uploads/2013/10/ERIC-compendium-approved-digital-web.pdf>.
- Hampson, F., Martin, C. & Viljoen, F. (2018). Inaccessible apexes: Comparing access to regional human rights courts and commissions in Europe, the Americas, and Africa. *International Journal of Constitutional Law*, 16(1), p. 161-186.
- Hanson, K. & Lundy, L. (2017). Does Exactly What it Says on the Tin?: A Critical Analysis and Alternative Conceptualisation of the So-called "General Principles" of the Convention on the Rights of the Child. *The International Journal of Children's Rights*, 25(2), p. 285-306.
- Hawkins, D. & Jacoby, W. (2010). Partial compliance: comparison of the European and Interamerican courts of human rights. *Journal of International Law and International Relations*, 6(1), p. 35-86.
- Hertogh, M. (2020). 'Let op! Hier wordt gehandhaafd': Handhavingsonderzoek in vier decennia. *Recht der Werkelijkheid*, 41(2), p. 95-104.
- Kamerstukken II 1967/68, 9724, No. 3. https://repository.overheid.nl/frbr/sgd/19671968/0000241280/1/pdf/SGD_19671968_0003629.pdf.
- Kamerstukken II 2020-2021, No.10133. <https://zoek.officielebekendmakingen.nl/kst-29544-1033>.
- Kilkelly, U. & Liefwaard, T. (2019). International children's rights: Reflections on a complex, dynamic, and relatively young area of law. *International Human Rights of Children*, p. 617-627.
- Kinderombudsman (2019). Hoeveel nachtjes nog? <https://www.dekinderombudsman.nl/publicaties/rapport-hoeveel-nachtjes-nog>.
- Kinderrechtencollectief (2021). Kinderrechten in Nederland: 2015-2020 Vijfde NGO-rapportage van het Kinderrechtencollectief aan het VN Kinderrechtencomité. https://www.kinderrechten.nl/assets/2021/04/NGO-rapportage_Kinderrechten_NL_Webversie.pdf.
- KIS (2018). Hoe vergroot je het vertrouwen tussen jongeren en de politie? Een handreiking voor het versterken van interventies. https://www.kis.nl/sites/default/files/bestanden/Publicaties/vertrouwen-jongeren-politie_0.pdf.
- Klaas, J., Beets, R. & Hendrickx, M. (2020). Guide on strategic litigation to combat ethnic profiling in the European Union. Amsterdam: PILP/NCJM. <https://pilpnjcm.nl/wp-content/uploads/2020/11/Guide-strategic-litigation-combat-ethnic-profiling-EU-web-4.pdf>.
- Kruize, P. & Gruter, P. (2020). Discriminatieaspect als strafverzwarende omstandigheid. WODC. <https://repository.wodc.nl/handle/20.500.12832/2475>.
- Laan, A.M. van der, Zeijlmans, K., Prop, L.C.J. & Beerhuizen, M.G.C.J. (2021). Evaluatie van het adolescentenstrafrecht: Een multicriteria evaluatie. WODC. <https://repository.wodc.nl/bitstream/handle/20.500.12832/3056/Cahier-2021-06-volledige-tekst.pdf>.
- Landman, W. & Sollie, H. (2018). Tegengaan van etnisch profileren. Een internationale literatuurstudie naar effecten van interventies. Amersfoort: Twynstra Guddé. <https://www.politieenwetenschap.nl/publicatie/politiewetenschap/2018/tegengaan-van-etnisch-profileren-308/>.
- Liefwaard, T. & van den Brink, Y. (2014). Juveniles' Right to Counsel during Police Interrogations: An Interdisciplinary Analysis of a Youth-Specific Approach, with a Particular Focus on the Netherlands. *Erasmus Law Review* (4), p. 206-218.

- Liefwaard, T. & Doek, J. E. (2015). Kinderrechten in de rechtspraak: een internationaal perspectief. *Tijdschrift voor Familie-en Jeugdrecht*, (4), p. 82-87.
- Liefwaard, T. (2019). Deprivation of Liberty of Children. In Kilkelly, U. & Liefwaard, T. (Eds.), *International Human Rights of Children*, p. 321-357. Singapore: Springer Nature.
- Liefwaard, T., Sloth-Nielsen, J. & Zlotnik, D. (2019). A new perspective on international children's rights jurisprudence. Leiden Law Blog. <https://www.leidenlawblog.nl/articles/a-new-perspective-on-international-childrens-rights-jurisprudence#:~:text=In%20that%20regard%2C%20while%20the,'due%20consideration'%20>.
- Liefwaard T. & Trotman, T. (2020). 30 jaar kinderrechten: zoeken naar nieuw elan, betrokkenheid en inclusiviteit. *Boom Strafbblad*, 1(1), p. 1-3.
- Limbeek, M. & Bruning, M. R. (2015). The Netherlands. Two Decades of the CRC in Dutch Case Law. In Liefwaard, T. & Doek J.E. (Eds.), *Litigating the Rights of the Child. The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, p. 89-105. Dordrecht: Springer.
- Manco, E. (2015). Detention of the Child in the Light of International Law: A Commentary on Article 37 of the United Nation Convention on the Rights of the Child. *Amsterdam Law Forum* 7(1), p. 55-75.
- Mutua, M. (2001). Savages, victims, and saviors: The metaphor of human rights. *Harvard International Law Journal*, 42(1), p. 201-246.
- NJI (2022). Kabinet erkent racisme bij belastingdienst. <https://www.nji.nl/nieuws/kabinet-erkent-racisme-bij-belastingdienst>.
- Nowak, M. (2019). Global study on children deprived of liberty. <https://omnibook.com/Global-Study-2019>.
- OM (2019). Requisitoir zaak Wilders, uitgesproken op 2 en 3 juli 2019. <https://www.om.nl/documenten/publicaties/hoger-beroep/07/02/requisitoir-hoger-beroep-zaak-wilders-2-en-3-juli-2019>.
- OM (2021). Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2021R001).
- Open Society Justice Initiative (2009). Racial Profiling by Spanish Police Officer Results in Unlawful Police Stop and Identity Check. <https://www.justiceinitiative.org/litigation/williams-v-spain>
- Open Society Justice Initiative (2016). International Standards on Ethnic Profiling: Decisions and Comments from the UN System. https://www.justiceinitiative.org/uploads/7db55139-d0d7-4752-a17e-b6bd7fae2a91/Digests-Ethnic%20Profiling-UN%20system%20revised-07.26.16_0.pdf.
- Pulles, G. J. (2014). *Vijfentwintig jaar IVRK en de Nederlandse rechter. Beschouwingen over de toepassing van het IVRK en de Nederlandse rechter*. Oisterwijk: Wolf Legal Publishers.
- Rap, S. E., Klep, K. F. M., van den Brink, Y. N., Bruning, M.R. & Liefwaard, T. (2020). Kinderrechten. De rechtspositie van kinderen in juridische procedures. In Bijleveld, C., Akkermans, A., Malsch, M., Marseille, B. & Smit, M. (Eds.), *Nederlandse Encyclopedie Empirical Legal Studies*, p. 95-132.
- Rehman, J. (2000). *The weaknesses in the international protection of minority rights*. The Hague: Kluwer Law International.
- Rodrigues, P. R. & Van der Woude, M. A. H. (2016). Proactieve politiecontrole en onderscheid naar etniciteit of nationaliteit. *Nederlands Juristenblad*, 91(32), p. 2294-2302.
- Rodrigues, P.R. & van der Woude, M.A.H. (2021). Etnisch profileren door de overheid en de zoektocht naar adequate remedies. *Crimmigratie & Recht*, (5)2, p. 108-125.

Staatscourant (2022). Staatscourant van het Koninkrijk der Nederland. Besluit van 3 mei 2022, houdende instelling van een staatscommissie tegen discriminatie en racisme. <https://zoek.officielebekendmakingen.nl/stcrt-2022-11349.html>.

Tweede Kamer (2021). Gespreksnotitie Koninklijke Marechaussee ten behoeve van het rondetafelgesprek etnisch profileren met de vaste commissie van Binnenlandse Zaken. <https://www.tweedekamer.nl/downloads/document?id=8cc84d33-a982-4edc-8ff7-f728a7bbc071&%5B...%5Dek%20Etnisch%20profielieren%20d.d.%2024%20november%202021.pdf>.

UN High Commissioner of Human Rights (2022). Addressing and Responding to Racial Discrimination in the Criminal Justice System. <https://www.ohchr.org/en/statements/2022/05/addressing-and-responding-racial-discrimination-criminal-justice-system>.

UNICEF (2020). Digital civic engagement by young people. UNICEF Office of Global Insight and Policy. <https://www.unicef.org/globalinsight/reports/digital-civic-engagement-young-people>.

Vandenhoe, W. (2005). *Non-discrimination and equality in the view of the UN human rights treaty bodies*. Antwerp: Intersentia.

Vandenhoe, W., Türkelli, G. E. & Lembrechts, S. (2019a). NON-DISCRIMINATION. In *Children's Rights*, p. 52-58. Cheltenham: Edward Elgar Publishing.

Vandenhoe, W., Türkelli, G. E. & Lembrechts, S. (2019b). INTRODUCTION: THREE DECADES OF CHILDREN'S RIGHTS LAW. In *Children's Rights*, p. 1-43. Cheltenham: Edward Elgar Publishing.

Voeten, E. (2010). Borrowing and nonborrowing among international courts. *The Journal of Legal Studies*, 39(2), p. 547-576.

Vries, K. de & Spijkerboer, T. P. (2022). Ik zie ik zie wat ik niet zie: Etnisch profileren en structurele rassendiscriminatie in het migratierecht. *Nederlands Juristenblad*, (8).

Whalen, C. (2022). Article 16: The Right to Protection of Privacy. In Vaghri, Z., Zermatten, J., Lansdown, G. & Ruggiero, R. (Eds.), *Monitoring State Compliance with the UN Convention on the rights of the child*. Cham: Springer.

WRR (2021). Samenleven in verscheidenheid: Beleid voor de migratiesamenleving. Den Haag: Wetenschappelijke Raad voor het Regeringsbeleid. <https://www.wrr.nl/publicaties/rapporten/2020/12/14/samenleven-in-verscheidenheid>.

Wermink, H.T., Johnson, B.D., Nieuwbeerta, P. & Keijser, J.W. de (2015). Expanding the scope of sentencing research: Determinants of juvenile and adult punishment in the Netherlands. *European Journal of Criminology* 12(6), p. 739-768.

Woude M.A.H. van der & Leun J.P. van der (2013), De Nederlandse veiligheidscultuur als katalysator voor etnisch profileren? *Tijdschrift over Cultuur & Criminaliteit* 3(2), p. 123-136.

Zeeuw, A. de (2022). Rights Rock Report: Strategy on the enforcement of Venezuelan migrant children's rights in Curaçao. Enforcement and Monitoring of Children's Rights course. University of Leiden.

Thematic analysis

1. Akkermans, A. & Kloosterman, R. (2022). Gediscrimineerd gevoeld? Centraal Bureau voor Statistiek (CBS). <https://www.cbs.nl/nl-nl/longread/statistische-trends/2022/gediscrimineerd-gevoeld-?onpage=true>.

2. Amnesty International (2020). Policing the pandemic: Human Rights violations in the enforcement of Covid-19 measures in Europe. <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>.
3. Bezemer, W. & Leerkes, A. (2021). Politie en Wetenschap Oververtegenwoordiging verder ontcijferd: Een kwantitatief onderzoek naar sociale verschillen in verdenkingskans en zelfgerapporteerd crimineel gedrag onder jongeren in Nederland. WODC.
4. Boon, A., Van Dorp, M. & De Boer, S. (2018) Oververtegenwoordiging van jongeren met een migratieachtergrond in de strafrechtketen. *Tijdschrift voor Criminologie*, 60(3), p. 268-288.
5. Bos, K., Ansems, L., Schiffelers, M.J., Kerssies, S., Lindeman, J., Bovens, C., Manshanden, L., Peters van Neijenhof, F. & Verhoeven, L. (2020). Een verkennend kwalitatief onderzoek naar klassenjustitie in de Nederlandse strafrechtketen. Utrecht: WODC. <https://repository.wodc.nl/bitstream/handle/20.500.12832/3070/3079a-verkennend-kwalitatief-onderzoek-naar-klassenjustitie-volledige-tekst.pdf>.
6. Brink, Y. N. van den (2018). (On) gelijkheid in het jeugdstrafrecht. *Tijdschrift voor Familie-en Jeugdrecht*, 40(11), p. 291.
7. Brink, Y. N. van den, Wermink, H. T., Bolscher, K. G. A., Van Leeuwen, C. M. M., Bruning, M. R. & Liefwaard, T. (2017). Voorlopige hechtenis van jeugdigen in uitvoering. Een exploratief kwantitatief onderzoek naar rechterlijke beslissingen en populatiekenmerken. Oisterwijk: Wolf Legal Publishers.
8. Brinkhof, S. (2021). The Dutch paradox: over discriminatoir handelen in de Nederlandse strafrechtspeling en concrete handvaten om dit tegen te gaan. NJB 2021/1803.
9. Buruma, Y. (2020). Racisme en discriminatie als 'systemische problemen'. NJB 2020/1716.
10. Control Alt Delete 2021. Ook etnisch profileren bij coronaboetes. <https://controlealdelete.nl/articles/ook-etnisch-profileren-bij-coronaboetes>.
11. Eerste Kamer (2022). Gelijk recht doen: Deelrapport Politie. https://www.eerstekamer.nl/overig/20220614/gelijk_recht_doen_deelrapport_4/f=/vltshvitmawd_opgemaakt.pdf.
12. FRA (2021). Your rights matter: Police Stops. European Agency for Fundamental Human Rights: Luxembourg. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-survey-police-stops_en.pdf.
13. Hertogh, M. (2020). 'Let op! Hier wordt gehandhaafd': Handhavingsonderzoek in vier decennia Recht der Werkelijkheid. *Recht der Werkelijkheid*, 41(2), p. 95-104.
14. KIS (2017). Leefomstandigheden van kinderen met een migratieachtergrond. <https://www.kis.nl/sites/default/files/bestanden/Publicaties/leefomstandigheden-kinderen-met-een-migratieachtergrond.pdf>.
15. Kinderrechtencollectief (2021). Kinderrechten in Nederland: 2015-2020 Vijfde NGO-rapportage van het Kinderrechtencollectief aan het VN Kinderrechtencomité. https://www.kinderrechten.nl/assets/2021/04/NGO-rapportage_Kinderrechten_NL_Webversie.pdf.
16. Kinderrechtencollectief & Rutu Foundation 2020. Racisme en discriminatie tegen kinderen in Nederland. <https://www.kinderrechten.nl/assets/2020/10/Kinderrechten-en-Racisme-versie-voor-kinderen-en-jongeren.pdf>.
17. KIS (2018). Hoe vergroot je het vertrouwen tussen jongeren en de politie? Een handreiking voor het versterken van interventies. https://www.kis.nl/sites/default/files/bestanden/Publicaties/vertrouwen-jongeren-politie_0.pdf.

18. KIS (2022). Jongeren melden discriminatie niet: 'Heeft geen toch geen zin': 21 maart Internationale Dag tegen Discriminatie en Racisme. <https://www.kis.nl/artikel/jongeren-melden-discriminatie-niet-heeft-toch-geen-zin>.
19. Kleijer-Kool, L. & Landman, W. (2016). Boeven vangen. *Het spel tussen politieagenten en de Ander. Tijdschrift over Cultuur & Criminaliteit*, 6(1), p. 42-65.
20. Kruisbergen, E. (2021). Criminaliteit onder personen met een niet-westerse migratieachtergrond. Ministerie van Justitie en Veiligheid. <https://open.overheid.nl/repository/ronl-523f11e0-6364-4f20-ab95-ed083dd07532/1/pdf/wodc-kruisbergen-criminaliteit-naar-herkomstgroepering.pdf>.
21. Landman, W. & Sollie, H. (2018). Tegengaan van etnisch profileren. *Een internationale literatuurstudie naar effecten van interventies*. Amersfoort: Twynstra Gudde. <https://www.politieenwetenschap.nl/publicatie/politiewetenschap/2018/tegengaan-van-etnisch-profileren-308/>.
22. Leerkes, A., Groeneveld, P. & Martinez, R. Etnische paradoxen: Zelfgerapporteerde criminaliteit onder Turkse, Marokkaanse en autochtone Nederlanders in relatie tot politiecijfers.
23. Ministerie van Justitie en Veiligheid (2021). Halfjaarbericht politie juni 2021: moties en toezeggingen. <https://open.overheid.nl/repository/ronl-fa9a78d7-b49e-41ef-809d-8a7225f607e0/1/pdf/tk-bijlage-2-moties-toezeggingen.pdf>.
24. Ministerie van Justitie en Veiligheid (2021). Kamerbrief: Etnisch profileren en overige onderwerpen met betrekking tot discriminatie. <https://open.overheid.nl/repository/ronl-6fd6d3dc-1d8f-4add-96a2-4d624e9ee500/1/pdf/tk-etnisch-profileren-en-overige-onderwerpen-met-betrekking-tot-discriminatie.pdf>.
25. Mok, M. & Uslu, M. (2022). 2Doc: De blauwe familie. KRO-NCRV. <https://www.2doc.nl/documentaires/series/2doc/2022/de-blauwe-familie.html>.
26. Nationale ombudsman (2020). Verkleurde beelden: Hoe moet de overheid omgaan met etnisch profileren. https://www.nationaleombudsman.nl/system/files/bijlage/Verkleurde%20Beelden-%20klachtbehandeling%20etnisch%20profilieren%20DEF_1.pdf.
27. NJI (2022). Cijfers over jeugd en opvoeding: Cijfers over delinquentie. <https://www.nji.nl/cijfers/delinquentie#:~:text=Een%20jaar%20eerder%20ging%20het,voor%20de%20Statistiek%2C%202022>.
28. Rosens, N. (2018). 2Doc: Verdacht. KRO-NCRV. <https://www.2doc.nl/documentaires/series/2doc/2018/december/verdacht.html>.
29. RSJ (2019). Minderjarigen in een politiecel: Een advies over duur, verblijf en alternatieve locaties. Den Haag. <https://www.rsj.nl/documenten/rapporten/2020/01/29/advies-over-minderjarigen-in-een-politiecel>.
30. Sociaal en Cultureel Planbureau (2021). Opgroeien in een kwetsbare wijk. <https://www.scp.nl/publicaties/publicaties/2021/05/27/opgroeien-in-een-kwetsbare-wijk>.
31. Van der Leun, J. P., van der Woude, M. A. H., Vijverberg, R., Vrijhoef, R. & Leupen, A. (2014). Etnisch profileren in Den Haag? Een verkennend onderzoek naar beslissingen en opvattingen op straat. Amsterdam: Boom Lemma uitgevers.
32. UN Human Rights Council (2020). Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to the Netherlands; 2 July 2020, A/HRC/44/57/Add.2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/161/63/PDF/G2016163.pdf?OpenElement>.

33. WODC (2017). Justitiele verkenningen: Dalende jeugcriminaliteit. Den Haag: Boom Juridisch. https://repository.wodc.nl/bitstream/handle/20.500.12832/798/JV1701-Volledige_tekst_tcm28-248443.pdf.
34. WRR (2021). Samenleven in verscheidenheid. Beleid voor de migratiesamenleving. Beleid voor de migratie samenleving. Den Haag: Wetenschappelijke Raad voor het Regeringsbeleid. <https://www.wrr.nl/publicaties/rapporten/2020/12/14/samenleven-in-verscheidenheid>.

International case law

Williams Lecraft v. Spain, CCPR/C/96/D/1493/2006, (2010). United Nations [UN]; Human Rights Committee.

A.E.A. v. Spain, CRC/C/87/D/88/2019, (2019). United Nations [UN]; CRC Committee.

M.K.A.H. v. Switzerland, CRC/C/88/D/95/2019, (2019). United Nations [UN]; CRC Committee.

Regional case law

D.H. and others v. Czech Republic

Gillan and Quinton v. UK

Lingurar v. Romania

Timishev v. Russia

B.S. v. Spain

Villagran Morales (et al.) v. Guatemala

Dutch case law

ECLI:NL:GHDHA:2021:1962

ECLI:NL:GHAMS:2014:1914

ECLI:NL:RBDHA:2021:10283

ECLI:NL:RBDHA:2021:10283

International legal instruments & Guidelines

UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74.

UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999.

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

CRC Committee (1996). *Concluding Observations: Guatemala*. <https://www.refworld.org/docid/3ae6af5a0.html>.

CRC Committee (2003). *Concluding Observations: Czech Republic*. CRC/C/15/Add.201. <https://www.refworld.org/docid/3f25962b4.html>.

CRC Committee (2015). *Concluding observations on the fourth periodic report of the Netherlands*. CRC/C/NDL/CO/4. https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_COC_NLD_20805_E.pdf.

CRC Committee (2022). *Concluding observations on the fourth periodic report of the Netherlands*. CRC/C/NDL/CO/5-6. <https://www.ohchr.org/en/documents/concluding-observations/crcnldco5-6-concluding-observations-combined-fifth-and-sixth>.

UN Committee on the Elimination of Racial Discrimination (CERD). *Concluding Observations of the Committee on the Elimination of Racial Discrimination: the Netherlands*. CERD/C/NLD/CO/22-24. <https://www.ohchr.org/en/documents/concluding-observations/cerdcnldco22-24-concluding-observations-combined-twenty-second>.

UN Human Rights Committee (HRC). *Concluding observations of the Human Rights Committee: the Netherlands*. CCPR/C/NLD/CO/5. <https://www.ohchr.org/en/documents/concluding-observations/ccprcnldco5-human-rights-committee-concluding-observations-fifth>.

CRC Committee (2003). General comment no. 5 on General measures of implementation of the Convention on the Rights of the Child. CRC/GC/2003/5. <https://www.refworld.org/docid/4538834f11.html>.

CRC Committee (2005). General comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin. CRC/GC/2005/6. <https://www.refworld.org/docid/42dd174b4.html>.

CRC Committee (2007). General Comment No. 10 on Children's rights in juvenile justice. CRC/C/ GC/10. <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

CRC Committee (2009). General comment No. 11 on Indigenous children and their rights under the Convention [on the Rights of the Child]. CRC/C/GC/11. <https://www.refworld.org/docid/49f6bd922.html>.

CRC Committee (2013). General comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31). CRC/C/GC/17. <https://www.refworld.org/docid/51ef9bcc4.html>.

CRC Committee (2016) General Comment No. 20 on the implementation of the rights of the child during adolescence. CRC/C/GC/20. <https://undocs.org/en/CRC/C/GC/20>.

CRC Committee (2019) General Comment No. 24 on Children's rights in the child justice system. CRC/C/GC/24. https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/CRC_C_GC_24_8968_E.docx.

CRC Committee (2021). General comment No. 25 (2021) on children's rights in relation to the digital environment. CRC/C/GC/25. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.

UN Committee on the Elimination of Racial Discrimination (CERD). General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination, 24 September 2009, CERD/C/GC/32. <https://www.refworld.org/docid/4adc30382.html>.

UN Human Rights Committee (HRC). CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, <https://www.refworld.org/docid/45139b464.html>.

UN Human Rights Committee (HRC). CCPR General Comment No. 18: Non-discrimination, 10 November 1989. <https://www.refworld.org/docid/453883fa8.html>.

UN Human Rights Committee (HRC). CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5. <https://www.refworld.org/docid/453883fc0.html>.

UN General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"): resolution / adopted by the General Assembly, 14 December 1990, A/RES/45/112. <https://www.refworld.org/docid/3b00f21d1c.html>.

UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33. <https://www.refworld.org/docid/3b00f2203c.html>.

Regional legal instruments & Guidelines

European Convention of Human Rights

Council of Europe: European Commission Against Racism and Intolerance (ECRI). General Policy Recommendation N°11 on Combating racism and racial discrimination in policing, Adopted by ECRI on 29 June 2007, 4 October 2007, <https://www.refworld.org/docid/51bec4fe4.html>.

Council of Europe: Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010), www.coe.int/lchildjustice.

ECtHR (2022). Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention. https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf.

ECtHR (2022). Practical Guide on Admissibility Criteria. Council of Europe/European Court of Human Rights. https://www.echr.coe.int/documents/admissibility_guide_eng.pdf.

National legal instruments & Guidelines

Act on Identification

Dutch Criminal Code

Dutch Criminal Procedure Code

Municipal Anti-Discrimination Provisions Act

Police Act

1994 Traffic Act

Weapons and Ammunitions Act

Politie (2020). Handelingskader professioneel controleren (Framework on professional controls).

OM (2021). Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt (2021R001).