Growing up in the Low Countries
Children's Rights in the Netherlands
The second report of the Dutch NGO Coalition for Children's Rights on the implementation of the Convention on the Rights of the Child in the Netherlands.

ANNEX

ALIEN POLICY AND CHILDREN'S RIGHTS

Kinderrechtencollectief: *Dutch NGO Coalition for Children's Rights*

- Defence for Children International Netherlands
- UNICEF Netherlands
- National Association for Child and Youth Legal Advice Centres
- Netherlands Youth Group
- Save the Children Netherlands
- Plan Netherlands
- National Youth Council
- Netherlands Institute for Care and Welfare (advisory member)

May 2003

Preface

This annex to the NGO report on the implementation of the Convention on the Rights of the Child in the Netherlands, *Growing up in the low countries*, by the Dutch NGO Coalition for Children's Rights (KRC) deals with children's rights in Dutch aliens policy.

In *Growing up in the low countries*, the KRC highlights the problems that it perceives in the field of children's rights in the Netherlands, thereby focusing on eight key areas of concern including the lack of regard for the Convention on the Rights of the Child (CRC) in Dutch aliens policy. The last few years have seen a great many changes introduced into this policy, which have resulted in Dutch aliens policy becoming much more rigid. Because it is such a complex area, this annex elaborates upon the information provided in chapter V on aliens policy and children's rights of the NGO report. Its aim is to draw special attention to the situation of the children who are subjected to this policy. Firstly, an outline is given of the social, political and legal context, and then the following issues are dealt with:

- Unaccompanied asylum seeking minors;
- Family reunification;
- 'Illegal' children;
- Other topics.

The annex concludes with a summary of the KRC's recommendations, which are the same as those made in chapter 5 of the NGO report. However, not all aspects of the problems of Dutch aliens policy are addressed. The primary emphasis is placed on issues relating to asylum policy. Numerous problems also arise in relation to, for example, migrant children, which are only peripherally addressed in the annex.

The terms 'children,' 'minors,' 'youth,' 'young people' and 'juveniles' are used interchangeably. All of these terms mean: any person under the age of eighteen (as defined in Article 1, CRC). Although the pronoun 'he' is used to refer to the child, this should also be read as 'she'.

The annex assesses the implementation of the Convention in the territory of the Kingdom of the Netherlands in Europe. It provides no information on the situation of children in the other two parts of the Kingdom, namely the Netherlands Antilles and Aruba in the Caribbean.

The annex was written on behalf of the KRC by Simone Bommeljé of Defence for Children International Netherlands. It is the result of close cooperation between a number of concerned organizations, particularly the Dutch Refugee Council (*VluchtelingenWerk Nederland*/VWN), Refugee Organizations in the Netherlands (*Vluchtelingen-Organisaties Nederland/*VON), the Unaccompanied Asylum Seeking Minor Humanitarian Foundation (*Stichting Alleenstaande Minderjarige Asielzoekers Humanitas*/SAMAH) and the International Network of Local Initiatives for Asylum Seekers (*Internationaal Netwerk van Locale Initiatieven ten behoeve van Asielzoekers*/INLIA).

It was submitted to an editorial committee consisting of members of the Dutch NGO Coalition for Children's Rights. The responsibility for the independent annex lies with the core group of the Coalition for Children's Rights: Defence for Children International Netherlands, UNICEF Netherlands, the National Youth Council, Plan Nederland, Save the Children Netherlands, the National Association for Child and Youth Legal Advice Centres and the Netherlands Youth Group, with the Netherlands Institute for Care and Welfare Youth (*Nederlands Instituut voor Zorg en Welzijn* (NIZW) *Jeugd*) fulfilling an advisory role.

The annex is not only intended as discussion material for the UN Committee on the Rights of the Child. It is also most definitely intended to stimulate the discussion of the rights of children in Dutch aliens policy as well. The annex is available in English. In the near future, a more in-depth Dutch version will be published alongside the English version.

The organizations listed at the beginning of the NGO report endorse the general content of the annex.

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A Social, political and legal context

1.1 Motive

While Dutch young people who are in trouble, run away, and/or are homeless are immediately given a place in a crisis centre, unaccompanied asylum seeking minors who end up in the Netherlands are put through the 'return model'. While we discuss whether Dutch biological parents/grandparents have the same rights of access to the children/grandchildren as the social parents, in aliens law we require legal parents of non-Dutch nationality to prove the 'factual family relationship.' And although we abolished the illegitimacy of children a number of years ago, we call children without valid resident status 'illegal' children. It is as though the balance between family law and aliens law has been lost: we clearly use two standards, one for Dutch people and one for aliens.

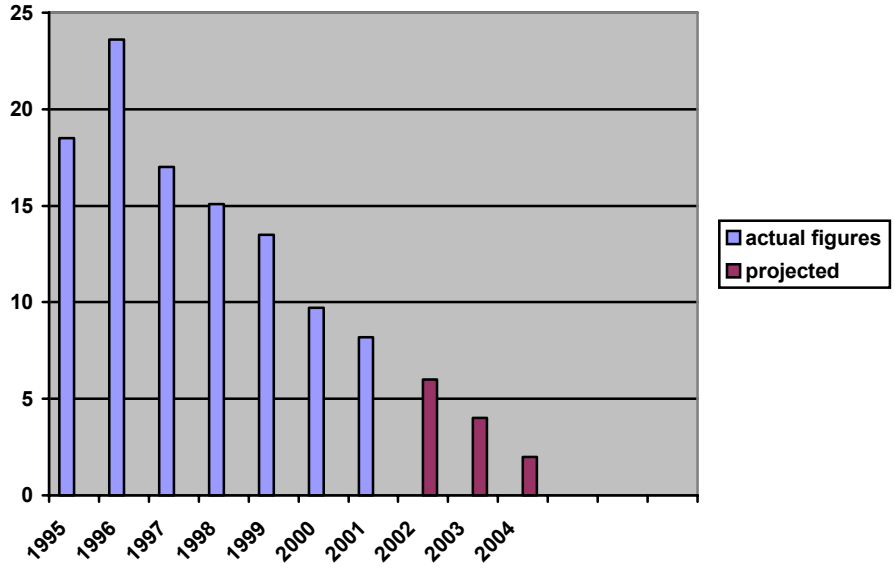
1.2 Aliens policy in a global perspective

Along with the developments at the national level, the KRC observes that migration policy is becoming stricter at the international level as well. Some examples include:
- the situation of the children in the closed asylum seekers centres in Woomera, Australia, where riots, escape attempts and suicide attempts are everyday occurrences;
- the United States, which has been rebuked by the UN High Commissioner for Refugees, Ruud Lubbers, because migrants are fleeing the US to Canada due to the completely changed attitudes towards aliens in the wake of the attacks of 11 September 2001;[1]
- the United Kingdom, which is arguing for the provision of care for refugees in the country/region of origin instead of in Great Britain.

1.3 Towards a more restrictive aliens policy

Figures
Recent years have been characterised by a tightening of Dutch aliens policy.

Number of requests for asylum granted (x 1000)



(Source: *Volkskrant*, 1 July 2002)

[1] *Volkskrant*, 2 May 2003.

Number of expulsions

Number of expulsions, 2001:		Number of expulsions, 2002	
Asylum	16,023	Asylum	21,255
Normal	24,897	Normal	29,126
		(Source: Immigration and Naturalisation Service (IND))	

Grounds for admission
This more restrictive policy has repercussions in many areas, including the new Aliens Act 2000 (*Vreemdelingenwet 2000*), which became effective on 1 April 2001. Article 13 of the Aliens Act 2000 entails that:

> An application for a residence permit is only granted if:
> a. this is required under international agreements and Dutch law;
> b. the presence of the alien serves the essential interests of the Netherlands; or
> c. this is required due to urgent humanitarian reasons.

In addition, due in part to the increased influx of unaccompanied asylum seeking minors, a stricter policy on unaccompanied asylum seeking minors has been in force since January 2001 and, lastly, a policy document on family reunification was produced in October 2001. All these policy changes have far-reaching consequences for asylum seeking children and other children. The following chapters describe what these changes mean for minors in general and unaccompanied minors in particular, and for children who have come to the Netherlands for family reunification and 'children without status', meaning children without the status of legal resident.

Political atmosphere and conceptions
Dutch politics has just been through a rather turbulent year. The rise of populist politician Pim Fortuyn (with his political party *Lijst Pim Fortuyn*/LPF), and his subsequent assassination, created a more difficult climate for aliens. The elections prior to the most recent ones, in May 2002, led to the installation of a cabinet in which this new political party, the LPF, was strongly represented, alongside the Christian Democratic Alliance (*Christen Democratisch Appel, CDA*) and the Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie, VVD)*. This cabinet produced a coalition agreement (or 'Strategic Agreement') that included plans such as the penalisation of 'illegality' (meaning not having the status of legal resident), tougher requirements for integration into Dutch society and a further increase in the financial requirements for family reunification. Additionally, a proposal was made to introduce a duty to identify oneself for all children over the age of 12 (now 14). Instead of the Minister of Justice and a Minister of Integration, the position of Minister for Aliens Affairs and Integration was created. Partly due to these developments, life in the Netherlands has become more difficult for migrants. In the wake of the fall of the cabinet, discussions on the formation of a new cabinet (based on the outcome of the January 2003 elections) were finalised in May 2003. This new cabinet leans towards the rightwing.

In the Netherlands, a variety of non-governmental organizations (NGOs) and churches involved in one way or another with refugees, children or human rights have made efforts to bring about a more humane aliens policy. More and more, various organizations are asking how youth law fits into the alien policy. Even the general public has expressed a great deal of criticism regarding the current policy. A survey by the Dutch Institute for Public Opinion and Market Research (TNS NIPO) commissioned by the Dutch Refugee Council revealed that two out of three Dutch people wished to see a less strict asylum policy. This study was based on a random sampling of more than 1000 Dutch voters.

Approximately two out of three Dutch people agree that:
- from now on, only asylum requests that clearly have no chance of success should be processed within a week;

- if the government has not ruled on a request for asylum after six months, as of then the asylum seeker should be allowed to work or study;
- refugees who have been in the Netherlands for 5 years or longer and come from war-torn countries or countries in which human rights are violated should be granted a residence permit on a one-off exceptional basis so that they can stay in the Netherlands;
- Dutch politicians should not only talk about the obligations of newcomers but also the duty of Dutch people to make efforts to help newcomers integrate successfully.

Over half of the Dutch people agree that:

- asylum seekers who do want to return to their countries of origin but have not arranged their travel within 28 days are entitled to reception until their return.

(Source: NIPO press release, 27 February 2003, www.nipo.nl)

These survey results are in spite of the fact that the elections of May 2002 seemed to show a massive swing towards a stricter asylum policy. In practice, there are also increasing cries of alarm from teachers, neighbours and acquaintances when a student, neighbour or friend is threatened with expulsion, and an increasing number of mayors across the country are taking up the cause of asylum seekers. The residents of the Dutch Wadden Sea island of Ameland are banding together to oppose the transfer of asylum seekers to the mainland. Once the asylum seeker has a face, it seems to be a different story as far as the Dutch are concerned.

International organizations have also expressed concern over the situation in the Netherlands. On 9 April 2003, the renowned human rights organization Human Rights Watch (HRW) presented an international report on Dutch asylum policy, very tellingly entitled *The Netherlands, fleeting refuge: The triumph of efficiency over protection in Dutch asylum policy*. This report draws hard conclusions on Dutch asylum policy in many areas, including on children. For the most part, this and other criticism goes unheeded by the Dutch government.

Ministry of Justice defends asylum policy

Human Rights Watch released a report yesterday sharply criticising Dutch asylum policy on a number of points... The Ministry of Justice rejects the criticism. The Ministry denies that the 'real' refugees are in danger of being victimised by the 'accelerated' procedure... The Ministry also denies that the Dutch method violates the rights of the child... the reception asylum seekers in the Netherlands are given is completely in line with European Union guidelines. (Source: *Spits*, 9 April 2003)

1.4 Children's rights and aliens policy

The Convention on the Rights of the Child (CRC) is supposed to be the benchmark for Dutch aliens policy. The Convention was ratified by the Netherlands on 6 February 1995. It hinges on 'the best interests of the child' principle (Article 3, paragraph 1, CRC):
In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

In weighing up the 'best interests of the child' against other interests, the Dutch government takes the position that while the 'best interests of the child' do not have absolute priority over other interests, "it is nonetheless considered in accordance with the intent of the Convention that the 'best interests of the child' should, as a rule, be decisive" (Explanatory Memorandum to the Act ratifying the CRC)[2]. Since then, the Dutch judiciary has also sanctioned the direct effect of this very significant Article 3, CRC.[3]

The Convention on the Rights of the Child indicates that within aliens law, too, the rights of the child should take priority. Children must be treated firstly as children, with respect for their rights, and only in the second place as aliens, subject to aliens law. However, in aliens law procedures, children are still seen as an 'appendage' of their parents and not as individual interested parties, even though in all

[2] Parliamentary Documents 22 855 (R1451), no. 3, p. 15.
[3] Preliminary Relief Judge of the District Court of The Hague, AWB 00/68785 VRWET.

procedures in which they are involved children do have independent interests. Although under the Convention, children have no direct right to institute legal proceedings, under Article 12, CRC, children do have the right to be heard in all legal and administrative proceedings affecting them. These interests should then be a principal consideration in those proceedings. Pursuant to Article 2, CRC, this also applies to minor asylum seekers admitted to the Netherlands. Furthermore, Article 4, CRC, calls upon States Parties to undertake all appropriate measures for the implementation of children's rights. Apart from these articles, the most relevant articles in this area are those on family reunification (Articles 9 and 10), the protection of children without families (Article 20), refugee children (Article 22), deprivation of liberty (Article 37 (b) and (c)) and, finally, the right of a child belonging to an ethnic or religious minority group to enjoy his own culture, to profess and practice his own religion and to speak his own language (Article 30).

Dutch aliens policy and the CRC
In the parliamentary discussions on the Aliens Act 2000, the Convention on the Rights of the Child was scarcely mentioned. In the report on the Act, the party Green Left (*Groenlinks*) asked whether the income requirements for family reunification were compatible with the Convention.[4] In the policy document in response to the report, the government did not even bother to address this question. In response to a question about whether the Convention on the Rights of the Child could be a basis for granting a residence permit to an unaccompanied asylum seeking minor,[5] the government stated simply that the Convention contains no provisions on residency law.[6]

On 29 October 2001, the government released a policy document penned by State Secretary N.A. Kalsbeek on the application of the 'factual family relationship' criterion for the admission of minors.[7] Kalsbeek claimed that this policy document took into account the joint memorandum by Forum, the Clara Wichmann Institute and Defence for Children International Netherlands. However, in terms of legal basis, the Convention on the Rights of the Child was not mentioned at all, as if Article 10 (family reunification) did not even exist. Additionally, the Dutch government's interpretative statement on Article 22, CRC (refugee children) was not justified in any way.[8] It is as though in developing its reformed aliens policy, the government had never heard of the Convention on the Rights of the Child, or that it interpreted the Convention such that 'the best interests of the child' meant 'the best interests of the government'.

Fortunately, the Convention is gathering interest among academics, and even lawyers are making reference to it with increasing frequency. Children's rights study days are being organized in a variety of contexts, and as the result of an initiative by Defence for Children International Netherlands, as of 24 April 2003 there is now a chair of Children's Rights in the Faculty of Law of the Free University Amsterdam (*Vrije Universiteit*). This position is held by Professor Jan Willems. Hopefully, this will promote a greater role in the future for the Convention on the Rights of the Child among the various organizations, ministries and persons (including judges and lawyers) involved.

The KRC finds it a matter of concern that Dutch aliens policy only mentions the Convention in passing, and wonders whether the new aliens policy was reviewed against the Convention at all when it was adopted.

Balance between children's rights and aliens policy
The KRC finds it disturbing that the Dutch government views the child first as an immigrant and only in the second place as a child. This is a major complication for compliance with the Convention, even though the Dutch government committed itself to the Convention in 1995. Moreover, the KRC is of

[4] Lower House, 1999-2000, 26732, no. 5, p. 68.
[5] Lower House, 1999-2000, 26732, no. 5, p. 65.
[6] Lower House, 1999-2000, 26732, no. 7, p. 44.
[7] Lower House, 2001-2002, 26732, no. 98.
[8] The only reference to this article in the government's interpretive statement is the proclamation that a refugee is a 'refugee' as defined by the Geneva Convention on Refugees.

the view that the balance between aliens policy and youth policy has been lost, and that children's rights have too little resonance in aliens policy. A new balance must be found.

B Unaccompanied asylum seeking minors

2.1 General

If it is ruled in the Netherlands that the minor is ineligible for asylum, the unaccompanied asylum seeking minor policy applies. On 1 May 2001, State Secretary of Justice Kalsbeek presented the reformed aliens policy (hereinafter the 'Kalsbeek policy').[9] Just as Dutch aliens policy became stricter, the unaccompanied asylum seeking minor policy could also be called more restrictive, evidenced in part by the goal of reducing the influx of unaccompanied asylum seeking minors. In essence, the Kalsbeek policy entails that unaccompanied asylum seeking minors that are not eligible for refugee status or admission on humanitarian grounds may only be granted a temporary residence permit under the unaccompanied asylum seeking minor policy until their eighteenth birthday at the latest (the VTV-AMA policy). This residence permit is only issued if the minor cannot look after himself independently and if there is no adequate care in the country of origin.[10] A young person who has been in the Netherlands for three years with a VTV-AMA residence permit may remain upon reaching the age of eighteen; all other young people must return to the country of origin. The intended reduction in influx is already being observed.

In 1998 there were 3,500 unaccompanied asylum seeking minors (8% of the total number of asylum seekers in the Netherlands)
In 1999 there were 5,000 (13% of the total)
In 2000 there were 6,700 (15% of the total)
In 2001 there were 5,950 (18% of the total)
In 2002 there were 3,232 (17% of the total)

The drop in absolute and relative figures from 2001 on reflects the national trend. The actual number of asylum seekers in 2002 has returned to the level of 1998. At present (May 2003) there are approximately 12,000 unaccompanied asylum seeking minors in the Netherlands who have requested asylum here in recent years. The countries of origin of the unaccompanied asylum seeking minors in the Netherlands requesting asylum in 2002 are broken down as follows:

Country	
Angola	854
Sierra Leone	392
Guinea	199
China	177
Togo	147
Afghanistan	141
Other	1,322
Total	3,232

Source: Most important countries of origin, Asylum Trends, monthly figures of INDIAC

The Kalsbeek policy assumes that unaccompanied asylum seeking minors who are not eligible for a residence permit on the basis of asylum must return to the country of origin as soon as possible. Along with the objective of limiting the influx of unaccompanied asylum seeking minors, another goal of the

[9] Lower House, 2000-2001, 27062, no. 14. This was preceded by Lower House, 1999-2000, 27062, no. 1 (State Secretary of Justice Cohen).

[10] It is reviewed whether or not a child older than 16 was able to look after himself independently in the country of origin in the past (subjective independence). Lower House, 1999-2000, 27 062, no. 2, p.13, introduced the 'objective independence criterion', which is met if a person under the age of 18 has reached the age of majority in the country of origin, or if a young person under the age of 18 can be considered *de facto* independent, for which the age of 16 is considered the breakpoint. Since this is currently being studied in 10 countries, the objective independence criterion is not yet being applied.

policy is the improvement of information on human sale and trafficking.[11] The first sentence of the Kalsbeek policy, 'The influx of minor asylum seekers into the Netherlands has sharply increased in recent years', does however set the tone for the new policy on unaccompanied asylum seeking minors. According to the policy document, unaccompanied asylum seeking minors constitute a quantitative problem that must be dealt with.

The Dutch NGO Coalition for Children's Rights (KRC) shares the government's anxiety with regard to the large numbers of unaccompanied asylum seeking minors requesting asylum in the Netherlands. If there are no reasons to request protection under asylum law in the Netherlands and residence is allowed only on a temporary basis, the question is how to prevent children from becoming uprooted. The best interests of the minor must be the overriding principle in the policy. The KRC finds a number of situations disturbing and in conflict with the Convention on the Rights of the Child. These situations are elaborated upon in the following sections. The following subjects will be dealt with in this chapter: the image of the unaccompanied asylum seeking minor; interviewing children in the Application Centre (AC); interviewing children from aged 4 to 12; the age examination; adequate care; reception in the transitional model; the unaccompanied asylum seeking minor campus; supervised unaccompanied asylum seeking minors (*begeleide alleenstaande minderjarige asielzoekers* or BAMAs); child headed families; abuse; and the 18-and-over problem. A number of the new measures within the unaccompanied asylum seeking minor policy that have been in force since the beginning of 2001 have never been substantively reviewed in the national courts.

2.2 Profile of the unaccompanied asylum seeking minor

Unaccompanied asylum seeking minors are not a homogenous group of young people. They come from a variety of countries of origin and for a variety of reasons. Some of them are refugees and have faced severe hardship in their countries of origin. Some of them come in search of a better future than they can look forward to in their own countries. Many studies of the backgrounds of these young people have been conducted, but there is no complete picture. In the new policy on unaccompanied asylum seeking minors, the unaccompanied asylum seeking minors are seen as a 'problem'.

This perspective was reiterated by Parliament Conservative Liberal Member Kamp (*Volkspartij voor Vrijheid en Democratie*, VVD): 'This is no longer just a serious problem, but an acute threat that requires immediate and effective government intervention... Everyone knows why people from China, Angola, Sierra Leone, Guinea, Somalia and other countries are willing to pay large amounts of money to human traffickers to bring their children to the Netherlands. They do that because their children have a very high chance of being allowed to stay here. The Dutch policy on unaccompanied asylum seeking minors allows the traffickers to give their customers their money's worth. This means that the rising tide will only turn when the children cannot stay here any longer and when people in the countries of origin actually see these children returning soon afterwards.'
(Source: General debate, 15 February 2001, Motion by Kamp, no. 563, 19637)

The image of unaccompanied asylum seeking minors in the Dutch policy is subject to change. There are at least four different images.
- unaccompanied asylum seeking minors as the victims of human trafficking;
- unaccompanied asylum seeking minors as children who do not tell the truth;
- unaccompanied asylum seeking minors as capable youth viewed as adults before their time;
- unaccompanied asylum seeking minors as traumatised children.

Contrary to what some people think, unaccompanied asylum seeking minors are by no means a carefree group of youngsters, so it is a very good thing that in the Netherlands initiatives are being pursued, usually at the local level, to connect Dutch young people with unaccompanied asylum seeking minors. There are buddy projects, by which a Dutch young person coaches an unaccompanied asylum seeking minor. In Amsterdam there is AMABEL, a meeting place set up by Defence for

[11] Fact sheet October 2001 (www.justitie.nl), 'Return central focus of unaccompanied asylum seeking minor policy', p. 1.

Children International Netherlands for unaccompanied asylum seeking minors. There have also been two successful unaccompanied asylum seeking minor festivals (March 2001 in Dronten and April 2002 in Leiden), and activities are also held for groups of ex-unaccompanied asylum seeking minors, such as the Dutch Refugee Council's 18-and-over projects. These activities and festivals give these young people a face and in so doing contribute to building a positive image of asylum seeking minors.

2.3 Interviewing children in the Application Centre (AC)

A family consisting of two adult children (23 and 20 years) and three minor children (15, 11 and 8 years) submits a request for asylum at the Application Centre (AC) in Zevenaar. The youngest sister is separated from the older children, because she must be interviewed in Den Bosch. The other children do not understand why they are being separated from their youngest sister. The lawyer arranges for a counsellor to be able to stay with the children in a separate area in the AC on the first day. The next day (while the counsellor is not there), however, the children are placed in the waiting area among the adult asylum seekers. They think that they are in prison, because there are guards and they cannot leave and because they are interviewed. A psychiatric examination reveals that the children suffer from post-traumatic symptoms as a result of the events in the AC, possibly reinforced by traumatic events in their past. In particular, it is noted that events from the past that were traumatic for the children have been discussed. (Source: case file of asylum lawyer Gerda Later)

The Application Centre (AC) procedure was introduced in 1994 with the object of weeding out the manifestly hopeless asylum requests from those requiring further investigation. With the introduction of the Aliens Act 2000, there is no longer any essential criterion on the basis of which it can be determined whether or not an asylum request can be resolved in the AC. The only criterion left is the question of whether the case can be processed with due care within 48 processing hours. With the introduction of the new unaccompanied asylum seeking minor policy, even the exception that the requests of unaccompanied asylum seeking minors cannot normally be processed through the accelerated procedure has been abandoned. All unaccompanied asylum seeking minors, regardless of age, must now submit the asylum request in an Application Centre. There are four ACs where the asylum request can be submitted. The one where the request must be submitted depends on the point of entry into the Netherlands: AC Rijsbergen (on the Belgian border) AC Zevenaar (on the German border), AC Ter Apel (Northeast region) and AC Schiphol (upon arrival at Schiphol Airport).

The asylum procedure consists of an initial interview and a follow-up interview. Just as with adult asylum requests, the first interview is the determination of nationality, identity and travel route. The follow-up interview discusses the grounds for requesting asylum. Since the introduction of the new policy, children aged 4-12 are also interviewed on their motives for seeking asylum (see 2.4 above). For children under 12, the policy is that the first interview is restricted to nationality, essential personal information and the determination of the child's language. For all young people, the first interview takes place in the AC. After the first interview, the Immigration and Naturalisation Service (IND) determines whether the follow-up interview on the motives for seeking asylum will be held in the AC. The child may also have to undergo a nationality check, a language analysis and an age examination (with regard to this last subject, see 2.6 below). The nationality check and language analysis have been sharply criticised as methods of determining the country of origin of an undocumented asylum seeker. Furthermore, the value of these methods when applied to children is questionable.

Despite the criticism from numerous sources, including the United Nations High Commissioner for Refugees (UNHCR),[12] that has been expressed on the processing of the asylum requests of children in the AC procedure, there is a noticeable tendency to completely process not only more adult asylum requests in the AC procedure, but more requests of children as well. At the end of 2002, 42% of the asylum requests of asylum seekers claiming to be unaccompanied asylum seeking minors upon arrival were processed in the AC. The rationale for doing this is unclear, however, since even after rejection

[12] In a letter to the Lower House, 11 June 2001, in a response to the letter of State Secretary Kalsbeek, 1 May 2001. In this letter the UNHCR expresses its concerns about the AC procedure. This criticism was dismissed by the former State Secretary in the debate (Lower House 2000-2001, 27062, no. 16) with the statement that '*the UNHCR guidelines are applied in full*.'

of the asylum request, unaccompanied asylum seeking minors are either given reception by the Agency for the Reception of Asylum Seekers or foster care by the guardianship agency NIDOS until their return can actually take place or until they reach the age of 18. Unaccompanied asylum seeking minors are not (yet) immediately forced out of the country. Even minors requesting asylum with an adult (who is not their legal representative) are given their follow-up interview in the AC in which the adult request is being processed in the AC procedure. Children under 12 within this group of supervised unaccompanied asylum seeking minors (or BAMAs; see 2.10 below) are also given follow-up interviews in the AC, which is why special interview rooms for them were set up in the ACs in mid 2002. These follow-up interviews are conducted by a specially trained interviewer who comes to the AC to conduct the interview.

In the former policy, there was a rest period of four weeks before these children were given a follow-up interview on their motives for seeking asylum. In the Kalsbeek policy document (3.7.5), however, the government states, "*that in practice, even after a period of 4 weeks it is not always easy to obtain clarity on the unaccompanied asylum seeking minor's account or reasons for seeking asylum*." The KRC agrees with this statement, but is of the opinion that processing in the AC procedure within 48 hours is the worst possible solution. Especially when dealing with young (and very young) people, an opportunity must be given to calm down to some degree and to adjust to the new situation. Moreover, it is extremely important that the child is given a proper explanation of the importance of the interview, which is, after all, the basis for the decision by the IND on whether the child will be granted asylum or not. The accelerated procedure in the AC is characterised by much shorter preparation periods for the initial and follow-up interviews, and a response time of only 3 hours for giving a motivation for the intention to reject the asylum request. The normal procedure allows more leeway.

The KRC is also of the opinion that the initial interviews of unaccompanied asylum seeking minors are not conducted by officials trained in interviewing children. No guidelines have been produced for taking children's initial interviews. In principle, the same standard questionnaire for adult interviews is also used for children. In addition, the development stage and age of the child is insufficiently taken into account (this is explained in more detail in 2.4 below). Finally, during the initial interview, children are rarely assisted by a social worker safeguarding the child's best interests.

In 2001, the National Ombudsman released a report on the living conditions in the AC.[13] This report led to a number of changes. The court ruled that the procedure constituted deprivation of liberty because, during the 48-hour process, asylum seekers could only leave the AC upon penalty of the revocation of their asylum request.[14] This has resulted in the change that now at least the asylum seeker can leave the AC in the evening and at night. The court also concluded that the procedure jeopardises the review with due care of the asylum request (see also Chapter E, 5.1 below). Finally, Human Rights Watch has expressed the following criticism of the AC procedure:

> The AC procedure by its nature is unlikely to ensure that unaccompanied children's special characteristics and needs are taken into account. Given the special vulnerability of children and the state's obligation to protect them and to act in their best interests, Human Rights Watch believes that unaccompanied children's asylum claims should under no circumstances be processed via the accelerated procedure. In cases where children are accompanied by their parents or another adult who is their legal or customary caregiver, the child's request for refugee status should be dealt with as part of the parent application for asylum unless the child has a distinct fear of persecution and wishes to lodge a separate claim on those grounds. No children should be interviewed immediately after arriving in the Netherlands; children need and should have time to adjust to being in a new environment. (Source: HRW, 2003)

Despite the fact that there have been (minimal) changes, the risk is still too high that, in assessing the justified fear of persecution, a standard is set that does not correspond to the level of mental development of the children. The KRC is of the opinion that the AC is an environment that allows

[13] Report no. 2001.0081.
[14] Appeal Court of The Hague, 31 October 2002, LJN-number AE9573, case number 00/68.

insufficient opportunities for young people to tell their story. For young people who have been through devastating experiences, it is often impossible to relate their accounts within the time frame of the AC procedure. There is too little room for children to prepare themselves, without the time pressure of the AC procedure, for the follow-up interview. These issues are in violation of Articles 3 (best interests of the child), 12 (right to be heard) and 22 (protection of refugee children) of the Convention on the Rights of the Child.

2.4 Interviewing children aged 4-12

In a decision on a 5-year-old, the IND considered that she had not convincingly argued *that the lack of documentation of her nationality and identity required for the assessment of her application was not her fault.* She had also insufficiently cooperated with the determination of her travel route*. It is not plausible that the party cannot submit any indicative evidence of the journey, nor is capable of making any detailed, coherent and verifiable statement on the travel route... During the interview, the party was uncommunicative and took an uncooperative attitude. She was asked questions that she could have reasonably been expected to be able to answer. Although a child cannot always be expected to give the same level of detail as an adult, the questioning in this interview was neither unclear nor of too high a level that the party could not reasonably have been expected to answer. The asylum seeker could have been expected to state something about her country of origin, her immediate living environment, or her parents and other relations. She could also have been expected to provide information about the period immediately preceding her departure from Angola and her journey to the Netherlands. Because she only stated that she did not come from Angola and never to have travelled by airplane, the only conclusion that can be drawn is that the asylum seeker concealed matters relating to her identity, nationality and travel route.* *(Source: Reneman, 2003)*

With the introduction of the new policy, since 4 March 2002 it is now possible to conduct interviews with children under 12 concerning their identities and account of their flight. As already stated in 2.3 above, all unaccompanied asylum seeking minors 4 years of age and older are given a (mandatory) initial interview and follow-up interview. All unaccompanied asylum seeking minors, regardless of age, must submit their asylum requests in an AC, which is also where the initial interview takes place. The IND's national unaccompanied asylum seeking minor unit has set up special interview rooms in Den Bosch and Elspeet, comparable to the rooms used by the juvenile police and the vice squad. The Kalsbeek policy document states that interviewing unaccompanied asylum seeking minors under 12 is, in principle, in the best interests of this category of minors, "*...since interviewing the minors gives them the opportunity to bring up their specific reasons for requesting asylum and background. It is primarily on the basis of this information collected during the follow-up interview that a decision can be made with due care, taking into account the best interests of the minor."*

The procedure for interviewing unaccompanied asylum seeking minors under 12 years of age has been set out in a protocol by the IND, which reads as follows:

- The unaccompanied asylum seeking minors are interviewed by specially trained interview staff.
- If a pedagogic or psychological examination determines that a child suffers from problems that could impede the follow-up interview, it may be decided that the minor will not, in principle, be given a follow-up interview.
- A photo book is used to prepare the children for the follow-up interview.
- The follow-up interview is videotaped.
- The goal is for the follow-up interview of a unaccompanied asylum seeking minor to take no longer than two hours, counting breaks. The standard follow-up interview includes one break.
- The goal is that the follow-up interview is structured such that the unaccompanied asylum seeking minor can relate the events in the manner most comfortable for the child, so that the asylum request can be considered with due care.
- If the unaccompanied asylum seeking minor has a counsellor, during the interview the counsellor may sit in another room with a video monitor to be able to follow the interview. In extremely urgent situations he may interrupt the interview or make comments.

The KRC has serious doubts on the practice and legitimacy of interviewing young children. First and foremost, there is a question of whether interviewing young children is permissable[15] and whether these children can comprehend the questions asked during the interview and their legal ramifications.[16] The picture painted by the literature is that anyone wishing to draw conclusions from the statements of young asylum seekers must be very alert. It must be kept in mind that these children must provide information in what is for them an unfamiliar environment. For very small children, it can be extremely taxing to have to make the long journey to the processing centre in Den Bosch or Elspeet. Additionally, these young children are often confused, have suffered trauma or have been given a story by human traffickers.

Despite the fact that the contact officials (outside the AC) do their very best to treat the children as pleasantly as possible, there are complaints that some questions are too confrontational, too direct or too far-reaching and that there is a lack of cultural communication. For example, an 11-year-old child is asked, "*Were you also at your father's funeral?",* in response to which the child told of how her father had been murdered while the children were escaping through a window. The language barrier also plays a crucial role. It is unclear whether on the one hand all interpreters are equally capable of translating to the point where the child really understands what is being asked, and on the other whether the children's answers are translated to the interviewers through the interpreter's perspective.

The burden of proof is different for children than for adults; the government is expected to investigate more itself. The IND contact personnel must look for clues that could indicate that the child needs protection; however, this duty of investigation resting on the IND under Article 2, Book 3, General Administrative Law Act, is all too quickly neglected.[17] Additionally, the children are asked very detailed questions (the colour of the airplane, the clothing worn by the crew), and factors such as the child's developmental level, impressionability, imagination and memory are not sufficiently considered. In one example, an eight-year-old was remonstrated because he could not say anything about the death of his father when the child was four, or anything about the period in his life between ages 4 and 6. Furthermore, the report of the initial and follow-up interviews makes it look as though the subject is an adult, and so the degree to which the child's mental and physical development was taken into account cannot be determined.

For example, IND interview reports have stated:
"I have never possessed an authentic passport in my own name." (a four-year-old)
"*I have never been married and apart from the aforementioned documents I am not in the possession of other documents with which I can substantiate the account of my journey"* (a nine-year-old)
(Source: Lozowski, 2003)

Secondly, the interviews are used by the IND to attempt to uncover contradictions in the child's own statements or those of his older brothers or sisters. Furthermore, a child's lack of documentation may

[15] District Court of Arnhem, 28 March 2001, Awb 00/66203. The District Court determined that the appeal (of a normal case) on behalf of the claimant, who at the time was five years old, was not allowable. The District Court ruled that a child of five years old is not capable of reasonably evaluating his interests. In the case in question there was no legal representative, so the child's appeal was not allowable.
[16] The IND itself does not consider children under 12 years of age capable of reasonably evaluating their own interests. TBV (Interim Policy Aliens Decree) 2001/33 stipulates under 24.3.3 that a minor asylum seeker under the age of 12 cannot sign his own asylum request because he is not considered capable of reasonably evaluating his own interests. When adults apply for naturalisation, minor children are included in that application (TBN 2202/5). Children under 11 years of age are not interviewed in the context of their naturalisation in the context of such applications, children 12 to 15 inclusive are only interviewed at their own request, and children 16-17 are always interviewed. The same policy applies for children requesting asylum together with their parents.
[17] District Court of Haarlem, 19 December 2002, Awb 01/66074. The District Court considered the appeal of a 14-year-old girl well founded. The IND had too quickly assumed that the child had provided insufficient information. The District Court concluded that there was no factual basis for the IND's position that the girl had failed to meet her obligation under Article 2, Book 4, General Administrative Law Act, and moreover the IND had neglected to perform any investigation.

be used against him, and/or the IND may attempt to discover personal information about adults in the Netherlands who could be responsible for the return of the child on the basis of the unaccompanied asylum seeking minor policy (see 2.10 below). During the interviews, doubts are openly expressed about what the child says.

In the case of a child headed family from Angola, IND officials interviewed the three youngest siblings who where aged five, seven and ten even though their lawyer had petitioned that they not be interviewed because the eldest sibling, a twenty-one-year-old brother, could tell their story on their behalf. On the basis of these interviews, the IND concluded that the children and their brother should not be granted an asylum permit because their story lacked credibility. One of the reasons was that the drawings the children were asked to make of their house in Angola differed.
(Source: HRW, 2003)

A child's counsellor may not be present in the interview room. Finally, there is still very little case law on these types of cases, where the best interests of young children are at stake. This is primarily due to the fact that a complaint must be lodged against the rejection of a unaccompanied asylum seeking minor residence permit, and so many cases have not been submitted to the court or are still pending.

The intention to reject the asylum request of a twelve-year-old includes the following: *It is considered that the credibility of the statements of the parties involved is subject to doubt. The party stated during the follow-up interview that he was 5, 6 or 7 years old when his parents died and that after that he lived for a number of years and months on the street, until he met X. In the corrections and supplemental statements, however, he states that it was two or three years from the time his parents died until the time he met X, which would make him 8 or 9 at the time of his parents' death. It is curious that the party cannot say with any more precision when his parents died, and it is also not considered credible that the party does not know what town/city he resided in during the 2 years (at least) that he lived on the street. Someone who lived in a place for two years and spent his entire life in Angola, and went to school for two years, can, despite his young age, be expected to be able to say something more about the place he lived... Since the party made statements lacking credibility, no credibility should be ascribed to any of the party's statements, so the application for admission is based on circumstances that, either in themselves or in connection with other facts, do not reasonably give any reason to surmise that there is any legal basis for admission. (Source: Reneman, 2003)*

In conclusion, the KRC argues that, in contrast to what is stated in the Kalsbeek policy document, namely that the interview is used to search for starting points for further investigation, more often the reality is that the decisions note that the interview subjects did not cooperate sufficiently, made implausible statements, etc. This is in stark contrast to the child's interest in careful preparation for the best decision possible. This decision should consist of either allowing the child to remain in the Netherlands legally or returning the child to adequate care in the country of origin. The option to interview children under the age of 12 has been changed into an obligation. The child's development and maturity is not sufficiently taken into account. These issues are in violation of Articles 3 (best interests of the child), 12 (right to be heard) and 22 (protection of refugee children) of the Convention on the Rights of the Child.

2.5 Lack of identity papers

Section 3.7.3 of the Kalsbeek policy document states that Article 15(c), first paragraph under (f) of the Aliens Act dealing with aliens without identity papers also applies to asylum seeking minors, unless the alien can convincingly demonstrate that the lack of documentation is not his or her fault.

Unicef's March 2002 study *Birth registration, right from the start* shows that:
- in many countries of origin there is no definitive population register;
- that the very groups that are persecuted are the ones that are not registered;
- in many countries of origin, the registration of a birth does not take place immediately after the birth, which may cause a discrepancy between the administrative age and the chronological age.

When an asylum seeking child's inability to submit identity documents is used against him, this is a failure to appreciate the position of the unaccompanied asylum seeking minor. The fact that asylum seeking children, like many adult asylum seekers, must often travel very unorthodox and sometimes even very dangerous routes to leave their country of origin is completely ignored. The fact that the child may be afraid is not considered in the decision whether or not to use the lack of documentation against the asylum seeker. These asylum seekers cannot be expected to have a consistent explanation for the lack of documentation, and certainly not in the AC procedure. UNHCR guidelines actually prescribe an active role for the government in uncovering an unaccompanied asylum seeking minor's motives for seeking asylum. Rejecting a request for asylum on the basis of the lack of documentation involves the risk that unaccompanied asylum seeking minors may be driven back to a country where they may be subject to persecution or human rights violations. This is in violation of Articles 3 (best interests of the child) and 22 (protection of refugee children) of the Convention on the Rights of the Child.

2.6 Age examination

The following is an extract from an interview between an IND official (IND) and a 16-year-old girl (G):
IND: Did you report the rape?
M: No, because the man told me he would kill me and I didn't know anyone else.
IND: Could you have asked the police for protection?
M: No, the police wouldn't have been able to do anything for me, they only help people who have money.
IND: Could you have asked for protection from a higher authority?
M: I don't know anyone else besides the police who could have helped me.
IND: Did you try to get help from one of the women's organizations in your country?
M: There's nothing like that in the place where I live.
IND: But did you try to go to the capital city where you could get help from the women's organizations?
M: I don't know anyone who I could go to the capital city with.
[...]
IND: You look a lot older than you say you are.
M: Yes, but I saw the papers my mother took to school and I am really 16.
IND: That can't be right, because you look much older. We're going to do an age examination on you.
(Radio 1, *1 op de middag*, 31 March 2003)

At the end of the initial interview in the AC, the IND determines whether the stated age is questionable. The age boundary of 18 years is very important (in relation to being a minor and being eligible for the normal minor asylum seeker residence permit). With the coming of the new unaccompanied asylum seeking minor policy, the age boundary of 15 is also important. This is the age under which the alien is eligible for the special assistance programme for unaccompanied asylum seeking minors (see also 2.8 and 2.9 below).[18]

The burden of proof of age rests with the unaccompanied asylum seeking minor himself. He can make a 'request' for an age examination. If the unaccompanied asylum seeking minor is suspected of not being a minor and the unaccompanied asylum seeking minor does not wish to participate in the examination, then he is treated as an adult. The age examination consists of a bone exam. For the 18-year-old threshold, the collarbone (clavicle) is x-rayed. This exam can establish whether an alien is older or younger than 20 years. For the 15-year-old threshold, an x-ray is taken of the hand and wrist. Based on the maturity of the hand/wrist area, the age of boys and girls can be determined to a certain degree, taking into account ethnic background and socio-economic class, so long as the growth process is not complete. The minimum age at which the growth process could be complete is 14.7 years for girls and 16.0 years for boys. The x-rays are taken in an examination centre in Eindhoven under the auspices of the IND. On the basis of these photos, a report for the IND is made by Harry van der Pas, a physical anthropologist at Tilburg University. Mr Van der Pas contracts radiologists for the assessment of the x-rays. A second opinion is allowed, although this is not reimbursed by the Agency

[18] Aliens Act Implementation Guidelines, 2000 (Vc2000) C5/24.3.2.

for the Reception of Asylum Seekers. There is an arrangement with the IND that the x-rays are not made available for second opinions.

The examination can have the result that the indicated age under eighteen is plausible, or that the asylum seeker is an adult. If the asylum seeker turns out to be older than 18 (or, in real terms, 20) then the asylum request is processed in accordance with the normal policy for adults, within the AC if possible. The result of the age investigation is taken into account in the assessment of the credibility of the asylum seeker's account. The result of the age examination can also have the effect that the adult asylum seeker may be placed in alien detention for months due to manifest deception.

*In the case of the Congolese girl Claudette, paediatric radiologist Dr. S. Robben of the Maastricht University Hospital (*Academisch Ziekenhuis Maastricht) *provided a second opinion with regard to the collarbone. "There is no frame of reference in the medical literature for determining if someone's collarbone is fully mature. There is nothing like a 'skeleton atlas for the collarbone that shows every stage of maturity, although there is such an atlas for the wrist. At present, conclusions are being drawn too quickly and easily by radiologists on the basis of subjective assessments," says Robben. (Source:* Trouw, *20 March 2002.)*

The age examination has been contested for the past 5 years. The IND's methods are being criticised from a variety of angles. The examination has been called ethically and scientifically irresponsible. Recently, in response to a complaint by the doctor's organization the Medical Advice Collective (*Medisch Advies Collectief*), the National Ombudsman initiated an investigation of the situation surrounding the examination, and concluded that the collarbone examination (clavicle method) can only determine whether a person is older or younger than the age of 20.[19] Thus, the purpose of the clavicle method age examination is, for the IND, limited; *the unaccompanied asylum seeking minor policy is in fact based on exact ages, for which the age limit of 18 is of crucial importance. The National Ombudsman states: Simply continuing the age examination by the clavicle method under these circumstances, which means using a relatively heavy-handed approach to achieve a goal that is fairly limited, is not justified insofar as it used as a basis for any conclusions beyond the determination of an age older or younger than 18.*

This conclusion by the National Ombudsman is important because the IND already bases the assessment of the reliability of the young person's own statement of age on the presence of fused collarbones. The National Ombudsman also considers it improper that the IND has rejected the objections of the National Health Care Inspectorate in regard to this procedure. Finally, the National Ombudsman considers it incorrect that no medical ethics committee has been appointed. At present the judiciary has also ordered an investigation into the reliability of the age determination on the basis of collarbone x-rays. The court has submitted questions to an expert, who has been asked to report to the court in mid-2003.

Other points of criticism from various organizations (including Defence for Children International Netherlands, the Dutch Refugee Council (*VluchtelingenWerk Nederland)* , radiologists, etc.) are:

- It is extremely dubious whether a determination can be made of whether the subject is older or younger than the age of 15 on the basis of a hand/wrist x-ray. This x-ray can be used to determine with certainty that the subject is under 18 if the maturation process is not yet complete, but if complete maturation of the hand/wrist area is seen in the x-ray, there is no way to tell with certainty exactly how old the subject is. Assuming that, on average, the growth process is complete around the age of 15 for girls and the age of 16 for boys is extremely questionable. Furthermore, reports following on from the age examination should show that ethnic and social background of the subject, along with gender, have been taken into account.
- It is known that very little scientific information is available on the growth process and growth rate of the collarbone for various population groups.
- Although the IND claims that the outcome of the age examination is independent of the substantive assessment of the age investigation, it is apparent that, if the age determined by the age

[19] no. 2002/386.

examination differs from the stated age, this has repercussions for the evaluation of the credibility of the asylum seeker's account.
- An unaccompanied asylum seeking minor is only given a follow-up interview once the result of the age investigation is known.
- The voluntary aspect (in accordance with the *Overeenkomst op de Geneeskundige Behandeling* or Medical Treatment Law) of the age examination is dubious. If the child does not participate in the examination, this can have consequences for the resolution of the request for asylum.
- There is an issue of radiation exposure. There is no medical need for the examination, and doctors point out that from the perspective of medical ethics, use of x-ray radiation when not medically necessary is a thorny issue. The younger the child is, the more serious this concern is, because younger children are more susceptible to this radiation.
- The IND has ignored the district court (three-judge chamber) ruling of 10 October 2000 that the bone examinations of unaccompanied asylum seeking minors must be discontinued.[20]
- An estimated 2,500 young people have wrongly been labelled 'adults,' branded as 'liars' and placed in alien detention.[21]
- The percentage of young people who, after the offer of an age examination, are then classified as adults on the basis of that examination is falling. This means that the age examination is changing from a means of establishing someone's adulthood in an objective manner to more of a 'trial and error' approach.
- In the age examination for whether a child is older or younger than 15, photos of both the hand/wrist area and the collarbone are taken. The photos of the collarbone are, however, unnecessary since the IND itself claims it does not wish to draw conclusions based on the fused collarbone.
- The question of whether an unaccompanied asylum seeking minor is under 15 is only important if an AMA-VTV (temporary residence permit under the unaccompanied asylum seeking minor policy) is issued. If so, then it is relevant whether the asylum seeker can be expected to hold the permit longer than 3 years, and thus be eligible for permanent residence. This medical exam is therefore irrelevant if the minor is not eligible for a residence permit as a minor for some other reason.

The UNHCR's Refugee Children Guideline states that if the age of a child is uncertain, the child must be given the benefit of the doubt. In the Netherlands, however, the child must produce proof and does not receive the benefit of the doubt. If a child does not know his precise age, this must not influence the substantive assessment of the asylum request. The KRC finds this a violation of Articles 3 (best interests of the child) and 22 (protection of refugee children) of the Convention on the Rights of the Child. Inflicting unnecessary health damage on children and violation of bodily integrity is also in conflict with provisions of the Convention.

2.7 Adequate care in the country of origin

A now 12-year-old girl from Mongolia arrives in the Netherlands in 2001 and is immediately taken in by a foster family. An investigation in the country of origin is conducted, but no family of the girl is found. The girl is very withdrawn and apparently suffers from memory loss. The child is now integrated as a child in the Netherlands. She attends primary school in Friesland and speaks Frisian, and the family would like to keep her. She has now had a negative decision on her asylum request as a result of the release of the second official country report on Mongolia, on the basis of which the IND has concluded that there is adequate care for this girl available in Mongolia (specifically, there are two psychiatric institutions for adults). The girl is completely unprepared for a potential return. (Source: Defence for Children International Nederland Help Desk, DCI-NL)

In assessing whether an unaccompanied asylum seeking minor is entitled to residence in the Netherlands, the self-sufficiency and adequate care are examined by country instead of by individual child. The Ministry of Foreign Affairs uses official country reports to classify countries as safe or

[20] Awb 99/8971 VRWET.
[21] Radio 1, *Trouw maandag,* 31 March 2003, p. 15 announcement.

unsafe and to make the determination of whether there is adequate care there or not. 'Adequate relief' means:[22]

Any care the circumstances of which do not essentially differ from the circumstances under which care is offered to children of the same age in a position comparable to the asylum seeker. Care can consist of shelter provided by parents and family members, friends, neighbours and members of the same tribe or village, and of aid by a relief organization (governmental or private). The adequacy is measured according to the standards of the country of origin and not Dutch standards. Whether there is adequate care in a particular country is assessed on the basis of the Minister of Foreign Affairs' official country report. The conclusion of whether, for the purposes of admission/non-admission, there is adequate relief in the country in question, is set out in the country-specific asylum policy. If not, it will be reviewed on an individual basis whether reception is necessary and/or whether there is adequate relief available.

In this way, the Dutch government assumes (see IND working instruction number 245A) that there is always adequate care available in China. With regard to expulsion policy, the working instruction states that, in the return phase, no investigation need be carried out into a specific care organization in China, since the official country report of 9 April 2001 states that the Chinese authorities will provide for the care of unaccompanied minors. According to the Dutch government, there is also adequate care by default in orphanages in Sri Lanka, Turkey and Algeria. Children originating from these countries are not eligible for a residence permit under the unaccompanied asylum seeking minor policy. The Netherlands is also working on concluding special return agreements with other countries, such as Angola.

[22] Lower House, 2002-2003, 27 062, no. 23, p. 1.

	Influx total, 2002	Adequate care
Angola	854	At present there is a mission to Angola to further facilitate return. The authorities have expressed the willingness to issue *laissez passers*. The construction of an orphanage is in the works, in collaboration with Developmental Cooperation (*Ontwikkelingssamenwerking*/OS) and the International Migration Organization (IOM). This project has been given to IOM.
Sierra Leone	392	The presence of adequate care is investigated on an individual basis.
Guinea	199	Guinea was visited in 2002. A reciprocal visit by the Guinean authorities took place in December. A Memorandum of Understanding on the deployment of identity experts to the Netherlands has been signed. Adequate care is investigated on an individual basis.
China	177	On the basis of the Ministry of Foreign Affairs' official country report of 9 April 2001, adequate care is assumed to be available in China. Chinese unaccompanied asylum seeking minors are not eligible for a residence permit under the unaccompanied asylum seeking minor policy.
Togo	147	The presence of adequate care is investigated on an individual basis.
Afghanistan	141	The presence of adequate care is investigated on an individual basis. There is no governmental care and no orphanages.
D.R. Congo	101	The presence of adequate care is investigated on an individual basis. There is no governmental care and no orphanages.
Somalia	87	The presence of adequate care is investigated on an individual basis. There is no governmental care and no orphanages.
Nigeria	70	The presence of adequate care is investigated on an individual basis.
Other	1,005	On the basis of the most recent official country reports, adequate care is considered to be present in Sri Lanka, Turkey and Algeria. Sri Lankan, Turkish and Algerian unaccompanied asylum seeking minors are therefore not eligible for a residence permit under the unaccompanied asylum seeking minor policy. The text of the Aliens Act Implementation Guidelines on Algeria will be amended accordingly in the near future.
Total unaccompanied asylum seeking minors	3,232	

Source: Annex to a letter of February 13, 2003, TK 27062, nr.13

In the past, the quality of the so-called 'individual official country reports' pertaining to unaccompanied asylum seeking minors has received a great deal of criticism but, for that matter, so have the reports in regard to adult asylum seekers. This criticism has been expressed not only by the various welfare organizations but also by the National Ombudsman and the Temporary Advising Commission on General Official Country Reports (the Wijnholt Commission). One problem is that the way the Ministry of Foreign Affairs assesses the situation is not known, and the way the investigation into adequate care is carried out often cannot be assessed because the Ministry wishes to protect its sources.

In a few court rulings it has been determined that these official country reports have not always been produced with the required degree of carefulness. When dealing with children, the utmost level of carefulness is required. Previously, care was only considered adequate if it could be provided by parents or family members. Over the years, this concept has become severely strained. For example, adequate care in the country of origin is simply assumed if a 16-year-old states himself that he still has family in the country of origin. In that case, no investigation is conducted into whether that may have changed, which would not be inconceivable considering that many young people come from war-torn countries.

In other cases, too, adequate care should not simply be assumed. Since the change in the definition of unaccompanied asylum seeking minor, no investigation whatsoever is conducted into whether there is adequate care available in the country of origin if there is an adult in the Netherlands who can be considered to be the caregiver for the child. This refers to the 'supervised unaccompanied asylum seeking minor,' or BAMA (for more on this designation, see 2.10 below). It must be investigated whether the parents are capable, or third parties are willing, or welfare institutions are able to provide care that serves the best interests of the child. An AMA-VTV must never be withheld without investigating the concrete care options.

2.8 Reception in the transitional model

The guardians of the over 1,100 unaccompanied asylum seeking minors in Overijssel have virtually no idea how things are going with the young people they have been given custody of. The police speak of roving unaccompanied asylum seeking minors wandering the streets. In some cases the youths are frequently gone for weeks on end. Some are even children of 12 years of age. There is no monitoring of their comings and goings. The guardians are under pressure from the increasingly scant asylum policy. The national government is primarily involved with the new unaccompanied asylum seeking minors who have since recently been housed in special campuses in Vught and Deelen. The old unaccompanied asylum seeking minors live in various locations across the country in foster families, on their own in small residential units or in regular asylum seeker centres. Because they receive almost no assistance, many unaccompanied asylum seeking minors become isolated. They are bored. They are not being trained to be independent and they have very little outlook for the future. All of these are risk factors for criminal behaviour. The welfare workers hope that the municipalities will give them discounts on sports clubs or will set up summer courses. Additionally, practical training must be provided for unaccompanied asylum seeking minors who will clearly have to leave the country.

*(*Trouw*, 3 April 2003, 'Supervision of "old" unaccompanied asylum seeking minors leaves a lot to be desired')*

The unaccompanied asylum seeking minor policy goes hand in hand with the introduction of a new reception model, the 'Campus Model' (see 2.9 below). For the time being, alongside the new model the existing unaccompanied asylum seeking minor model will continue to exist for the group of unaccompanied asylum seeking minors who fall under the former policy and for unaccompanied asylum seeking minors under the age of 15 years who fall under the new policy. The quality of the reception provided to unaccompanied asylum seeking minors in the various facilities (asylum seeker centres (AZCs), reception centres (OCs), small residential units (KWEs), small residential groups (KWGs) and foster families) has continually been the source of comment and complaint. More and more unaccompanied young people are being received in asylum seeker centres, which are set up for adults or families with children. These centres have no form of pedagogic supervision at all. Additionally, in the small residential units there are too few mentor hours available. The UN Committee on the Rights of the Child commented on the reception of unaccompanied asylum seeking minors as far back as October 1999 in its concluding remarks on the implementation of the CRC in the Netherlands:[23]

"While noting the efforts to deal with unaccompanied asylum seeking minors, the Committee is concerned that they may need increased attention. The Committee recommends that the State Party strengthen measures so as to provide immediate counselling and prompt and full access to education and other services for refugee and asylum seeking children. Furthermore, the Committee recommends that the State Party take effective measures for the integration of these children in society."

The government responded to this in a memorandum of 21 October 1999 by stating that attention to and supervision of unaccompanied asylum seeking minors is an ongoing concern of the Dutch government. Nonetheless, a large number of unaccompanied asylum seeking minors still leave for unknown destinations. Because there is no adequate record kept of this, it is unclear just how many unaccompanied asylum seeking minors are disappearing.

[23] UN Document CRC/C /15/Add. 114, par. C6-23.

The KRC notes that since then, there have been no actual changes and, in light of the CRC and the remarks of the UN Committee on the Rights of the Child, believes that it is time for a serious and systematic analysis of the reception policy.

2.9 The unaccompanied asylum seeking minor campus

With the introduction of the new unaccompanied asylum seeking minor policy, a new reception model has been implemented, which is supposed to have less of a catch-all effect (Balkenende cabinet road map)[24]. This new reception model is linked to an integration model and a return model. After a basic period (six to nine months), minors expected to remain in the Netherlands for longer than 3 years are placed in the integration model. Those not expected to remain in the Netherlands for longer than three years are placed in the return model, in which preparation for return is the main emphasis. There is no integration into Dutch society. Unaccompanied asylum seeking minors younger than 15 years of age are placed in the AZCs, OCs, KWEs and KWGs and in foster families, where they are prepared for return (see 2.8 above).

Two unaccompanied asylum seeking minor campus pilot projects have now been started, in Vught (as of November 2002) and Deelen (as of February 2003). The present campus methodology means that the campus is a closed system. A distinction is made between the 'rookie' and 'senior' phases. A point system is also used. The official language on the campuses is English. The languages of the countries of origin may also be spoken. The campus model provides an intensive and full programme each day. The house rules are not set out on paper and the system is changed frequently. The original objective for Vught was a capacity for 360 unaccompanied asylum seeking minors. In practice, a capacity of 180 unaccompanied asylum seeking minors is maintained, the same as in Deelen. This large-scale capacity is organized by the Agency for the Reception of Asylum Seekers. NIDOS has guardianship of the young people. A total of 131 young people were placed in the campuses in Vught and Deelen in the period from 11 November 2002 up to and including 6 April 2003. 89 of them (68% of the total) are still in the asylum procedure. Of all young people ever placed on the campus, 27 (over 20%) departed for unknown destinations (*met onbekekende bestemming*, or MOB).[25] Additionally, on multiple occasions a number of young people have run away from the unaccompanied asylum seeking minor campus in protest of the strict regime. The campuses have also been criticised from many different angles.

A youth has resided at the campus in Deelen since 3 March 2003. He can't stand it at the campus and wants to get away because it's just like a prison. The youth reports that the gate is always shut and he is not allowed to leave the premises. He shares sleeping quarters with 7 or 8 persons. He also states that he has absolutely no idea how the point system works and in which phase he is (rookie or senior). He cannot smoke, even though he is a smoker. He can speak English or his own language, but he still cannot communicate properly with anyone, which makes him feel alone. He has very frequent headaches. He receives no spending money allowance. There is no library and there are no books or magazines. His mobile phone was taken away from him.

(Source: interview, Stichting Rechtsbijstand Asielzoekers*)*

Firstly, the KRC finds it unacceptable that there are young people at the campus who do not belong there. As already stated, approximately 68% of the young people on the unaccompanied asylum seeking minor campuses are still in the asylum procedure and are already being prepared for return, and additionally there is one youth from Northern Iraq on the campus who has an AMA-VTV, so in his case there is no prospect of a quick return to that country. This youth belongs in the integration model.

Furthermore, there is so little opportunity to leave the campus that for practical purposes the residents are deprived of their liberty. 'Protection' is not an argument to lock up unaccompanied asylum seeking

[24] TK 2000-2001, 27062, nr. 14, p. 26.
[25] Document containing figures on unaccompanied asylum seeking minor campuses (received by e-mail), Wilma Lozowski, 7 April 2003.

minors under conditions equivalent to deprivation of liberty.[26] Deprivation of liberty must be the last alternative and have a legal basis. No independent supervisory committee has been established, since the Agency for the Reception of Asylum Seekers already has a complaint system in place.[27] Partly in view of the fact that the campus is in effect a closed situation, like a penal institution, a corresponding independent committee must be set up to monitor the campus and address complaints from unaccompanied asylum seeking minors. However, the Agency for the Reception of Asylum Seekers is not an independent party, but an instrument of government policy.

The unaccompanied asylum seeking minors' education consists of two hours of English lessons and a few hours of sports per day. Furthermore, the best interests of the child are not served if a child in a position of vulnerability is placed in a large group outside of society, without privacy and without individual attention.

Finally, nothing has been put down on paper that would make it possible to adequately campaign against this policy. On 23 April 2003, the Preliminary Relief Judge in preliminary relief proceedings[28] (instituted by Defence for Children International Netherlands, the Dutch Refugee Council (*Vluchtelingen Werk Nederland*), the Asylum Seekers Legal Advice Centre (*Stichting Rechtsbijstand Asielzoekers/*SRA), the Association of Asylum Lawyers and Jurists Netherlands (*Vereniging Asieladvocaten en juristen Nederland*/VAJN) and the Netherlands Legal Committee for Human Rights (*Nederlands Juristen Comité voor de Mensenrechten*/NJCM)) concluded that there are insufficient options offered to the young people for free choice recreational activities. According to the court, this violates Article 31 (leisure, recreation and cultural activities), CRC. In this ruling, the court also ruled that an independent complaint commission must be set up within one month and that the young people must be allowed to use their spending money allowance as they see fit.

In conclusion, the KRC is of the opinion that the closed unaccompanied asylum seeking minor campus has no legal basis and there are possible alternatives that would offer adequate care. The current practice in the return model violates Articles 3 (best interests of the child), 6 (right to development), 22 (protection of refugee children), 28 (right to education), 31 (privacy) and 37, paragraphs (b), (c) and (d) (deprivation of liberty as a last resort) of the Convention on the Rights of the Child.

2.10 Supervised unaccompanied asylum seeking minors

In introducing the new policy, the Netherlands has determined that the unaccompanied asylum seeking minor policy does not apply to children who have a family member (to the fourth degree) living in the Netherlands. These children are referred to as 'supervised unaccompanied asylum seeking minors' (*begeleide alleenstaande minderjarige asielzoekers*, or 'BAMAs').[29] In practice, this means that a child's asylum request is rejected if there is shown to be someone in the Netherlands who can take care of the child or who can be considered to care for the child. This child is no longer classified as unaccompanied and is no longer entitled to protection under the unaccompanied asylum seeking minor policy. The consequence is that the child is forced to depart without the need for any IND investigation into the availability of adequate care in the country of origin, because the review under the unaccompanied asylum seeking minor policy does not take place. The adult must provide for the presence of adequate care for the child in question 'in a country other than the Netherlands'. This means that if the child turns out to have a family member in the Netherlands, the child is worse off than if he had had no family relationship with anyone in the Netherlands. Moreover, it does not appear as though there is any investigation of the quality of the care actually provided by the family member, and it must also be noted in this regard that the caregiver need not be the legal guardian. In some cases

[26] Lower House, 2002-2003, 27 062, no. 21.
[27] Lower House, 2002-2003, 27 062, no. 20.
[28] *KG* 03/284.
[29] Aliens Act Implementation Guidelines 2000 C/27.1.3.

it is not even checked whether the adult in question is capable of caring for the child. Recently, a child of 5 was sent out on the streets with his mentally handicapped brother.[30]

In the case of a five-year-old Somali boy the authorities determined from the start of his asylum procedure that he was accompanied because his maternal aunt was living in the Netherlands. Since the boy was considered too young to be a refugee, the IND ruled that he was the responsibility of his aunt. This means that his aunt - who is legally living in the Netherlands - is responsible for tracing his mother, even though no one knows where she is or how to contact her, and for returning the boy to Somalia. If the mother is not found, the boy's aunt has a choice to make: she can either give up her life in the Netherlands to return with the boy to Somalia to raise him or she could let him stay illegally with her in the Netherlands, knowing that he may remain forever undocumented. (Source: Human Rights Watch, 2003)

The above goes against the Convention on the Rights of the Child. If parents cannot provide care, the State has a special duty of care, and this cannot be different for children of another nationality who find themselves on Dutch territory.

2.11 Child headed families

A growing portion of unaccompanied asylum seeking minors are members of 'child headed families': a minor mother with her very young child/children or an older child accompanied by one or more younger sisters, cousins, or child uncles or aunts with toddlers. Some child headed families were already a family unit in the home country, in which the oldest took on the role of caregiver and leader. But it is not uncommon that the child headed family is an *ad hoc* 'family' with no family relationship, or at least not a close one.[31] During the asylum procedure these child families are usually received in an asylum seeker centre in Elspeet operated by the Valentine Foundation (*Stichting Valentijn)*, which provides for schooling for the children. There is also a child care centre to take in the babies and toddlers when their caregivers are in school themselves, and there are special play areas for the kids. Furthermore, the medical care services and the group leaders are specially equipped for perinatal care for the teenage mothers and expectant mothers.

Child headed families who are approved for asylum are placed in the integration model. To keep the social unit as intact as possible, they are housed in small residential units with 2-3 other child families. One problem, however, is that there are only a few small residential units that allow child headed families to live together. In some cases the children can be placed together in a residential group if the oldest is not too old for such placement.

Four siblings arrived in the Netherlands and they requested asylum. The children told the authorities that they were eight, twelve, fourteen and fifteen years old. During an accelerated asylum procedure the eldest child was sent for a bone scan examination, after which it was determined that she was 'at least eighteen years of age.' After the four siblings were denied asylum, the authorities denied the three youngest children a temporary residence permit on the ground that the older sibling who accompanied them could provide for their case, despite the fact that the children would be forced onto the street or to live on charity. Luckily for these children, NIDOS has intervened, allowing them to unofficially remain in a reception facility for the time being.
(Source: HRW, 2003).

In the former unaccompanied asylum seeking minor policy, these asylum seeking minors were handled as unaccompanied individuals, but in the new policy the unaccompanied asylum seeking minor policy that applies to the oldest child/minor mother applies to all children of the family. In other words, if the oldest child turns 18, the residence permit with the restriction 'for residence as an unaccompanied minor alien' is revoked for all children belonging to the family. This conforms to the

[30] Lozowski, 2003.
[31] *Een gezinshoofd van 11 jaar* ['An eleven-year-old head of household'], David Engelhard, www.pharos.nl.

premise of the Kalsbeek policy document that the special policy framework does not apply if adult relatives by blood or marriage remain in this country (see also 2.10 above). The unaccompanied asylum seeking minor policy also means that 'if the child family consists of an adult mother and her child, then in view of the statutory duty of care on the part of the mother, the reception for both mother and child is discontinued. If the child family consists of a grown child accompanied by one or more younger siblings, given the absence of statutory duty of care, only the reception of the grown child is discontinued.'

2.12 Abuse of unaccompanied asylum seeking minors

A Chinese girl lost her parents and only sister in an earthquake. She was taken away from her home town by women traffickers and brought to Moscow. The girl was raped and locked up in a hotel room. The traffickers brought the girl to the Netherlands in the trunk of a car. She eventually managed to escape and applied for asylum in the Netherlands (district court case). (Source: Trafficking report, 2001)

At the end of the nineties, there was a lot of publicity surrounding unaccompanied asylum seeking girls in Dutch prostitution. Although in recent years this phenomenon seems to have quieted down, the problem of prostitution of unaccompanied asylum seeking girls has still been identified by asylum seeker centres and aid workers. A number of aid workers have indicated that they occasionally receive requests for help from asylum seeker centres and reception centres regarding unaccompanied asylum seeking girls who are thought to be involved in prostitution. These days, the unaccompanied asylum seeking minor procedure seems to be comparatively little used by human traffickers to smuggle girls into the Netherlands, probably due to the publicity, stricter controls and a more restrictive asylum procedure. Now, trafficked girls may come into the Netherlands with false passports, often over land (via Spain or Italy). Only if the pimps are caught is the unaccompanied asylum seeking minor procedure still used.

According to the Nigerian Platform this is the way that some Nigerian girls come illegally into the Netherlands over land without using the unaccompanied asylum seeking minor procedure. Some organizations indicate that the problem of unaccompanied asylum seeking girls in prostitution has indeed shifted to Belgium and Great Britain, where the asylum procedure for unaccompanied asylum seeking minors is less strict. Aid organizations say that this does not mean there are no more traffickers active in the Netherlands. Many women from Eastern Europe, and particularly Bulgaria, are encountered by various institutions, and this group of women includes minors. Unaccompanied Asylum Seeking Minor Humanitarian Foundation (*Stichting Alleenstaande Minderjarige Asielzoekers Humanitas/*SAMAH*)* estimates the number of asylum seeking minors and minor refugees who become involved in sexual exploitation is between 300-500 per year. West African girls come mainly from Angola, Nigeria, Guinea, Ghana and Sierra Leone. Fewer Nigerian unaccompanied asylum seeking minors are coming to the Netherlands now than several years ago.

Today, girls seem to be more often lured into prostitution at reception centres instead of disappearing upon arrival at the reception centres (via the contact persons of traffickers in the country of origin). Although it appears that fewer unaccompanied asylum seeking minors are disappearing from the centres, there is no record kept of unaccompanied asylum seeking minors who disappear and likely end up in prostitution. The 'loverboy' scam seems to be used more often for forcing girls into prostitution. As a vulnerable group, the unaccompanied asylum seeking girls perfectly fit the profile of easy prey for the so-called loverboys. Pimps collect the unaccompanied asylum seeking girls from the centres on the weekend and bring them back on Sunday. This is safer for the pimps because the girls no longer disappear from the centres. Due to the security, pimps seem to be concentrating more on the small residential units, where there is less monitoring by aid workers.

During the Ken Saro Wiwa crisis the parents of a 16 year old Nigerian girl were killed. When she arrived at the airport in the Netherlands, she applied for asylum. After one month she met a Nigerian man in the asylum centre. He was married to a Dutch woman and had lived in the Netherlands for more than ten years. After some time he invited the girl to visit them. What seemed to be a kind invitation developed into a bad situation. The man

forced her to have sex with him and when she refused he told her that he and his friends would send her back to Nigeria. She was very afraid and obeyed him. He eventually forced her to have sex with his friends and after a few months convinced her to go to Italy. With false documents she travelled to Italy. She didn't know that he sold her to a trafficker for NLG 40,000. In Italy she was forced to work as a street prostitute. It was a hard life for her. She met another Nigerian prostitute and together they managed to escape and travelled to Belgium. Because they were illegal, they didn't see another way to earn money other than to work as prostitutes. She did not like her work at all and after half a year she escaped and travelled back to the Netherlands. She met the lawyer again who worked on her asylum application. She was denied asylum status. There is no other choice for her but to live illegally in the Netherlands. (Source: Oviawe, et al. 1999)

Another phenomenon that has been given increasing coverage in the press in the Netherlands is sexual abuse within the reception centres. For example, in Leiden sexual abuse of unaccompanied asylum seeking girls came to light, presumably by male minor refugees in the same reception centre. In a mixed residential reception centre where boys and girls live together, do not have segregated sleeping quarters and where there is little supervision, there seems to be ample opportunity for sexual abuse. Pharos confirms the suspicion that sexual abuse within the centres is becoming a bigger problem. The victims appear to be primarily girls from Angola and Guinea.

Finally, Nigerian girls are often unreachable by the normal institutions. Traffickers impress on the girls that Dutch aid organizations work with the police, and they will be sent back to Nigeria as soon as they report anything. Generally victims are only registered by the Foundation against Traffic of Women (*Stichting Tegen Vrouwenhandel*/STV) once they have actually made a report of human trafficking.[32]

2.13 The 18-and-over problem

Under the former policy, continued residence after holding a VTV-AMA for 3 years was generally the rule rather than the exception. Only if adequate care was found in the country of origin within 3 years was return possible, and in practice, this rarely happened. Now, an unaccompanied asylum seeking minor can be given a permit for continued residence if he has held a VTV-AMA for three years before he turns eighteen. This makes being granted 'A' or 'C' status more important. It also follows from the new unaccompanied asylum seeking minor policy that protection is only given to the unaccompanied asylum seeking minor until he reaches the age of 18, and only if necessary. Unaccompanied asylum seeking minors who are still in the procedure retain their benefits. On 15 September 2002, the scheme for the termination of financing of rejected unaccompanied asylum seeking minors/ex-unaccompanied asylum seeking minors became effective. This scheme prescribes that young people 18 years of age and older must arrange for their departure within a term of 28 days after being given notice of obligatory departure. After the expiry of this 28-day term, the asylum seeker's benefits (reception, follow-up accommodations, NIDOS care and spending money allowance) are discontinued, even though it is usually impossible (even if the asylum seeker is cooperating) to obtain the required travel documents in such a short amount of time.

The approximately 2,000 unaccompanied asylum seeking minors still falling under the former policy are being requested to come to the office of the local Aliens Police for a departure consultation, after which, for them too, the spending money allowance ends following a 28-day period. On 27 February 2003, the District Court of Haarlem[33] ruled on an objection lodged by an ex-unaccompanied asylum seeking minor due to the termination of the spending money allowance. In that case, the court ruled that the lack of review of the cooperation principle was wrongful. The cooperation principle entails that someone who can show that he has done everything in his power to obtain travel documents must not be expelled from the reception programme. The cooperation principle is an element of Plan III, which applies to adult asylum seekers. Since this plan is applied to adult asylum seekers and not ex-unaccompanied asylum seeking minors, there is an issue of legal inequality. If, however, this cooperation is refused, immediate measures can be taken. As a result of the discontinuation of the

[32] Daalder, 2002.
[33] AWB 02/90709.

benefits, ex-unaccompanied asylum seeking minors can face financial and social problems and an interruption of their studies, causing them to drop out of sight. When this happens there are risks of criminal behaviour and prostitution.

A very troubling example is the case of the female Chinese ex-unaccompanied asylum seeking minors who, as teenagers in the Netherlands, had a child (or more than one) and after reaching the age of 18, were put out on the street with their children. For various reasons (including the one-child-policy of china and the lack of documentation) they could not return to China and thus remain illegally in the Netherlands. At present there is a very limited amount of remigration of rejected unaccompanied asylum seeking minors. Most likely this group remains illegally in the Netherlands.

2.14 Return

As demonstrated by the above, return is the central focus of Dutch aliens policy. There is no future for young people with unaccompanied asylum seeking minor status in the Netherlands after the age of 18. Before the age of 18 everything in the policy focuses on making the young people aware that they must go back to their country of origin. The special return model was developed specifically for this purpose, and it is currently carried out by two unaccompanied asylum seeking minor campuses and four unaccompanied asylum seeking minor reception centres that, on a small scale (approximately 100 places), attempt to prepare young people for their return.

There are problems with this approach. Firstly, young people would rather not face returning; they turn their backs on the issue. At the beginning of 2002, there were 3,000 young people with pending district court proceedings. At the end of 2002 this number was 9,000, or three times as many. Aid workers indicate that as long as the young people are in the procedure, they have little concern for the return to their own country. When counsellors discuss the return with the young people, they usually respond with fear or denial and do not wish to acknowledge the situation. Some young people withdraw or suffer from physical symptoms. Counsellor's stories show that besides a life of illegality in the Netherlands, some young people also indicate that suicide is an alternative for return. According to a SAMAH press release, in 2002 three unaccompanied asylum seeking minors committed suicide. The young people's counsellors (at the centres, in education, etc.) also have to learn to deal with the concept of return. A 'quick scan' by the Pharos organization shows that only 20% of the 160 counsellors questioned support the new policy.[34] With this thought at the back of one's mind, it is difficult to convey to the young people that return is something desirable.

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C. Family reunification

3.1 General

Many aliens to whom residency status is granted after a long-term asylum process have family members who do not remain in the Netherlands. There are several forms of what is generally referred to as 'family reunification,' the major ones being normal family reunification, extended family reunification and family formation. Family reunification is when the spouse and any minor children settle with the spouse residing in the Netherlands. Extended family reunification is when a family member other than the spouse or minor children, such as an adult child or a parent of an adult, settle with a family member in the Netherlands. Family formation occurs when a marriage partner settles with a person already residing in the Netherlands at the time of marriage or entering the relationship[35].

There are (at least) three distinct groups of aliens: (1) EU subjects; (2) aliens from non-EU countries; and (3) refugees and asylum seekers.[36] These three groups have different positions and must meet different requirements to be eligible for family reunification.

While the influx of asylum seekers is falling, increasing numbers of people are trying to come to the Netherlands for family formation or reunification, to work or to study. The number of MVV (authorisation for temporary stay) applications required for work, study, reunification or family formation has risen from 50,195 in 2001 to 64,728 in 2002. 39,405 applications were approved in 2002, the majority of which (nearly 24,000) were for family formation or reunification. This has now exceeded the total number of asylum seekers coming to the Netherlands: in 2002, 18,667 people submitted requests for asylum.[37] The number of people applying for family reunification within the asylum policy is small in comparison to the number of applications for normal family reunification. In 2002 only 594 people applied for family reunification with asylum status holders, of which many were either Afghanis from refugee camps in Pakistan (262) or Iraqis (54).[38]

With the entry into force of the Aliens Act 2000 on 1 April 2001, much has changed in the field of family reunification. For the first time, the law of family reunification is set out in the act itself. The right to family reunification and family formation is codified in the Aliens Act 2000 in Article 15 (family reunification and family formation for normal aliens), Article 29, paragraph 1(e) (application for permanent residence permit for spouses and minor children of refugees, not family formation), and other articles. Article 29, paragraphs 1(e) and (f), entail that to be eligible for asylum-related family reunification, the family must have joined the applicant within three months, otherwise the policy for normal aliens applies. Along with the Aliens Act 2000, a new Aliens Decree 2000, new Regulations on Aliens and new Aliens Act Implementation Guidelines have also become effective. During the debate on the Aliens Act 2000 in the Lower House of Parliament on 7 June 2000, member of the Lower House Nebahat Albayrak asked the then State Secretary of Justice for an opinion on the unity of the family in relation to Dutch aliens policy.

> Albayrak noted thereby that she, '*as a people's representative in both the normal family reunification policy and the asylum policy, regularly encounter(s) extremely distressing problems, such as cases of children who now make up an irreplaceable part of the new family of one of the separated parents in the Netherlands, but who are nonetheless refused residence because, for example, it cannot be sufficiently demonstrated that the bond with the parent residing in the Netherlands was not broken.'*

Partly as a result of this request, the policy paper on the application of the 'factual family relationship' criterion for the admission of minor children (hereinafter: Factual Family Relationship policy paper)

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[35] Aliens Act Implementation Guidelines 2000 B2/1.
[36] Meuwese et al., 2000.
[37] IND press release, 8 May 2003, www.ind.nl.
[38] *Terugblik op* 2002, *Migratie info*, Vol. 9, number 1, p. 11-13.

was ultimately published in October 2001.[39] This policy paper applies to normal family reunification and not to asylum-related family reunification. Asylum-related family reunifications will be very closely scrutinised indeed for whether the family members are actually relatives of the principal person, and DNA tests will be requested on occasion. The Factual Family Relationship Policy Paper states that with regard to the initial admission of minor children, along with the general requirements such as the financial resources requirement, there is also the requirement that the 'factual family relationship' must remain unbroken and that this relationship must already have existed in the country of origin.[40] The Factual Family Relationship Policy Paper allows a maximum term of 5 years in which a parent or parents must submit a request for family reunification, and the concept of factual family relationship is considered to be intact so long as the parent and child have been separated for less than five years. After this five-year period the actual family relationship is, in principle, considered broken.

In order to be admitted to the Netherlands as part of a family reunification (whether normal or asylum-related), family members must hold authorisations for temporary stays (*Machtigingen voor Voorlopig Verblijf* or MVVs). Thus, the first step in initiating the family reunification process is to apply for the issue of an authorisation for temporary stay. The authorisation for temporary stay allows the holder to travel to the Netherlands and apply for residence of longer than three months. As from the time that the application for the issue of an authorisation for temporary stay is approved for a family reunification, the party has a period of six months to pick up the authorisation for temporary stay from the relevant Dutch diplomatic representation.[41] As has already been seen from the above, however, a distinction must be observed between EU subjects, 'normal' aliens and refugees:

1. EU subjects have the strongest position in Dutch aliens policy. The rights of this group are based on the European Conventions and Directives that guarantee the free movement of persons and goods. EU subjects may have their legal children brought to the Netherlands regardless of whether there is an actual family relationship. These rules do not apply for Dutch people residing in the Netherlands wishing to bring a partner or child to the Netherlands.
2. Normal aliens are allowed family reunification and family formation for 'urgent humanitarian reasons'. In short, the children must actually belong to the family of the applicant(s), that is, the family relationship may not be broken. Foster children and adopted children (even those of another nationality) may also be part of the actual family relationship.[42] The burden of proof rests with the parent(s) residing in the Netherlands. If a holder of a permanent residence permit cannot meet the requirements (and does not qualify for an exemption), then an appeal to Article 8, ECHR (family life) is still possible, but is only honoured in cases of objective impediment to the enjoyment of a family life outside of the Netherlands.

Grounds for admission of normal aliens:
- Valid residence of principal applicant (B2/2.7 Aliens Act Implementation Guidelines 2000);
- Valid marriage or registered partnership (Art. 3.14 under a/b, Aliens Decree 2000, B2/2.2 Aliens Act Implementation Guidelines 2000);
- Age requirement: normally, applicant must be 18 or older (3.15 Aliens Decree 2000 and B2/2.6 Aliens Act Implementation Guidelines 2000);
- Actual members of family: minor children (3.14 under c, Aliens Decree 2000 and B2/6 Aliens Act Implementation Guidelines 2000). The parents must be morally and financially independent, and have been so outside of the Netherlands;
- Authenticated documents (B2/2.3, B2/6.4 and B2/12, Aliens Act Implementation Guidelines 2000): of valid marriage, family law relationship with children;
- Registration in Municipal Base Administration and requirement of actual cohabitation (3.17 Aliens Decree 2000, B2/2.4 and B2/2.5 Aliens Act Implementation Guidelines 2000);
- Financial resources requirement (Article 16, paragraph 1, opening lines and (c), Aliens Act 2000, 3.73 et seq., Aliens Decree 2000, B1/2.2.3, Aliens Act Implementation Guidelines 2000): sustained and independent access to net income from work equal to national assistance benefit level for couples/families;

[39] Provisional Aliens Policy Decision (*Tussentijds Bericht Vreemdelingenbeleid* or 'TBV') 2002/4, Bulletin of Acts and Orders 22/03/2002, no. 58.
[40] Aliens Act Implementation Guidelines 2000 B2/6.4.
[41] Aliens Act Implementation Guidelines 2000 C1/4.6.1.
[42] Aliens Act Implementation Guidelines 2000 B3, 1, Aliens Decree 2000 4.47

- No long-term (six months or longer) imprisonment (3.20, Aliens Decree 2000, and B2/2.10, Aliens Act Implementation Guidelines 2000);
- Waiting period (B2/2.8, Aliens Act Implementation Guidelines 2000);
- Other grounds for rejection (Article 16, Aliens Act 2000): no valid authorisation for temporary stay or passport. No danger to public order. (Source: Dutch Refugee Council, 2002b)

3. Children (and partners) of asylum seekers and refugees can travel with the family or follow, so long as they have the same nationality and travel either at the same time as the principal applicant or follow afterwards within three months of the granting of the temporary asylum permit. Also, the 'factual family relationship' criteria applicable to normal aliens does not apply to asylum seekers travelling afterwards within 3 months, nor does the income requirement applicable to normal aliens. As already described, refugees do have to meet the application for authorisation for temporary stay requirement. After the three-month period, the same rules applicable to family reunification for normal aliens apply.

The KRC is concerned about the severe criteria the Dutch government sets under the new policy on eligibility for family reunification. Although the policy paper was intended to relax the rules on family reunification, State Secretary of Justice Kalsbeek actually made it more restrictive on a number of points. Compared to the policy in other European countries, the Dutch policy is worse in a number of areas. The following sections discuss: the Convention on the Rights of the Child; costs associated with family reunification; the follow-on travel requirement; the heavy burden of proof; the factual family relationship criterion; other situations; and European developments.

3.2 Family reunification and the CRC

In the creation of the Aliens Act 2000 and the Factual Family Relationship Policy Paper, no reference was made to the Convention on the Rights of the Child, even though the provisions of the Convention stress the interest a child has in the civil law obligations of parents to maintain, care for and bring up the child. The obligation of States Parties to the Convention to respect the parental responsibility for bringing up the child (Articles 5 and 18, CRC) is not considered, and the child's right to be cared for by the parents (Article 7, CRC) is not mentioned. Furthermore, a child's right to be heard (Article 12, CRC) is given no legitimacy and Article 10, CRC, on family reunification, goes unmentioned.

Article 10, first paragraph, CRC:
In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

In addition, according to the text of Article 10, CRC in the Dutch Bulletin of Treaties (*Tractatenblad*), applications for family reunification must be dealt with ' ***welwillendheid****, menselijkheid en spoed',* where the English text reads 'in a ***positive***, humane and expeditious manner'. While the English word 'positive' is defined as "affirmative, decided, clear, downright, with conviction, with absolute certainty, utter, complete, incontrovertible, etc.", the Dutch term '*welwillend*' is translated as "sympathetic, favourable, kind". It can be argued that the Dutch translation of Article 10 of the Convention on the Rights of the Child is less positive than what the Convention advocates.

The right to family life as defined in Article 9, CRC, also goes further than the right to family life under Article 8, ECHR, but this too is still not acknowledged by the Dutch judiciary. An appeal to Articles 9 and 10, CRC, is usually not honoured, or it is ruled that the Convention has not been violated.

The KRC concludes that applications for family reunification must henceforth be dealt with in a positive way. Furthermore, the KRC would prefer a specific reference to the Convention on the Rights of the Child in the Factual Family Relationship policy paper, because this would much more actively

live up to the responsibilities the Convention brings with it. Finally, the KRC hopes that the Dutch judiciary carry out a careful review of Articles 9 and 10, CRC, so that a decision in the best interests of the child can be taken.

3.3 Costs associated with family reunification

Costs associated with family reunification:

a. Costs of DNA tests
b. Costs of birth certificates, marriage register extracts
c. Costs of the entire journey (accommodation and travel expenses) from the country of origin to the Netherlands
d. Costs of transit visa/exit visa
e. Costs of passport (or laissez-passer)
f. Costs of authorisation for temporary stay
g. Any fines for exceeding the term of validity of the exit visa (in country of departure)
h. Airport fees
i. Costs to and from Schiphol Airport and place of residence
j. Fees for application for (normal) residence permit
k. Costs of keeping contact throughout entire procedure (telephone, shipping, internet and any mutual visits).

(Source: Dutch Refugee Council, 2002a)

Family reunification goes hand in hand with a number of expenses, which can add up to a great deal of money. A number of other countries cover some or all of these costs (including Denmark, Finland, Norway, Spain, Luxembourg and Sweden). The Dutch government does not contribute to the costs of family reunification and raises extra financial obstacles.

Firstly, there is an extra income requirement for the various categories of aliens wishing to come to the Netherlands for family reunification. The status holder must have the prospect of at least one year of income equal to the national assistance benefit level for a Dutch couple or family. Previously, the income requirement was 70% of the national assistance benefit level. Refugees under the terms of the Geneva Convention have the right to be reunited with their immediate families (partner and children) without any income requirement being imposed on them. However, the Netherlands only refrains from using the income requirement against status holders for the initial period (3 months) after the granting of status.

Under the new policy, parents who do earn sufficient income but do not have permanent employment can only become eligible for family reunification after three years of consecutive employment, and this does not take into account parents who were temporarily unemployed or worked part-time while caring for a young child. Furthermore, immigrant women married to Dutch men and who may even have children from that marriage must also meet the income requirement. It should be noted in this case that if the woman does not possess sufficient financial resources (which is often the case), the Dutch man may act as referent, although in that case the problem may arise that the Dutch man may not be able to demonstrate factual family relationship, since the children have never had a relationship with him and they have never belonged to his family.

Secondly, in practice the problem arises that refugees in particular lack financial resources and options for financing the travel of their family members. In the initial period, most refugees receive a national assistance benefit that is deducted by the maximum possible amount for the repayment of the national assistance loaned for the furnishing of the residence. Unemployment among refugees is high (see the ITS (Institute for Applied Social Sciences) study '*Nieuwe etnische groepen in Nederland*' ('New ethnic groups in the Netherlands'), 2000, amongst others) and income research by the Central Bureau of Statistics (CBS) shows that refugees have the lowest average income level of all immigrant groups (CBS, *Allochtonen in Nederland* ('Immigrants in the Netherlands'), 2000). Family members of refugees must first travel to a neighbouring country with a Dutch embassy and then stay there for anywhere from several weeks to several months before the procedure to obtain the necessary

documents is completed. A Relief Work Fund has been set up for this purpose, consisting of Cordaid, *Samen Op Weg Kerken* and the Dutch Refugee Council, but this fund is overwhelmed with applications.

Type of application	Rate in euro as of 1 January 2002	1 January 2003	Increase
First residence permit, age 12 and up	56.72	430	660%
First residence permit, under age 12	22.69	285	1,150%
Extension of temporary residence permit	free	285	28,500%
Permanent residence permit	226.89	890	290%
Community subject residence permit	15.88	28	75%

Thirdly, virtually all aliens except asylum seekers and citizens of the EU must pay fees for applying and obtaining residence permits. The Dutch government has implemented two fee increases within the space of a year. The first fee increase took place in May 2002. As of January 2003, after the second fee increase, a family of two parents with two children over 12 and one child under 12 must now pay a total of EUR 2,005 for the initial residence permits. Each extension will cost that family EUR 1,425, even if the application is rejected. These two recent fee increases for residence permits puts the Netherlands out of step with the neighbouring countries and are an impediment to the integration of longtime legally settled immigrants in this country.[43]

Finally, there is a debate around the issue of family formation. The current government (until end May 2003) have plans to set the income requirement for family formation at EUR 19,000 per year. These parties wish to restrict the right to bring a partner into the Netherlands to those earning more than 130% of the minimum income (including holiday allowance), or about EUR 1,550 per month. Additionally, an amount of EUR 6,000 must be set aside for the partner's integration course. After completion of the course, approximately half is reimbursed. According to figures from the CBS, over 600,000 immigrants between the ages of 18 and 65 do not earn enough to be able to marry a partner from outside the Netherlands (this applies only for non-EU countries).[44]

The KRC is alarmed by the fact that the creation of significant financial barriers (in particular, increased fees and costs of the integration course) for aliens wishing to come to the Netherlands for family reunification means that a number of families that cannot meet these costs are being excluded from reunification, and thus children are being prevented from joining and being brought up by their parent(s). In the view of the KRC, this violates Article 3 (best interests of the child), CRC and Article 10, which obliges States Parties to deal with applications for family reunification in a positive, humane and expeditious manner, as well as Article 2, CRC, which forbids unequal treatment.

3.4 The follow-on travel criterion for asylum-related family reunification

The children of refugees and asylum seekers can travel with the parents or follow afterwards. Under Article 29 of the Aliens Act 2000, the follow-on travel period is restricted to three months after the granting of status to the parent (principal applicant), with the consequence that the application for authorisation for temporary stay must be submitted to a Dutch embassy in the country of origin within this three-month period.

The former policy granted a 'reasonable term' for this under the Aliens Act Implementation Guidelines, which amounted to a term of six months as a rule of thumb. However, case law on the

[43] Groenendijk, 2003.
[44] *Volkskrant*, 29 May 2002.

subject has ruled that this suggested term is not a firm deadline; on 11 August 1999 the District Court of Haarlem found a term of fourteen months still reasonable.[45]

The Dutch government's motivation for the 3-month criterion is to have the family reunification take place as quickly as possible, because the expeditious arrival of the family members can promote integration in the Netherlands. In support of this claim, the government refers (in the policy paper in response to the report) to section 186 of the UNHCR handbook, which states that the protection of family members of a refugee must extend to the case "where family unit has been temporarily disrupted through the flight of one or more of its members." This argument is an incorrect interpretation of section 186 of the Handbook, which is actually intended to mean that the family of the refugee must also be offered protection if the family unit is temporarily disrupted due to the flight.[46] In these situations most refugees want nothing more than to be reunited with their families as quickly as possible.

Problems arise for people trying to meet the follow-on travel criterion in countries with no Dutch embassy where they can submit an application for an authorisation for temporary stay. They must then travel to a neighbouring country that does have a Dutch embassy. Another problem for refugees is that they do not always possess valid travel documents.

A man from Nigeria has fled to the Netherlands and wishes to bring his 3 children to the Netherlands as soon as possible. His wife died in Nigeria and the aunt who cared for his 3 children was killed in a car accident a number of months ago. During the asylum procedure in the Netherlands, the man asked the IND a number of times whether he had enough time, and as he understood it, the IND told him that he had enough time to bring his children to the Netherlands. In the end the follow-on travel period of three months expired and he must apply for a normal family reunification. These requirements are stricter; for example, he must now suddenly meet a higher income requirement if he wants to be reunited with his children in the Netherlands.
(Source: DCI-NL Help Desk)

In contrast to a policy-based term, a statutory term is more difficult to exceed. An appeal to the hardship clause (Article 3.71, paragraph 4, Aliens Decree 2000) for a waiver of the authorisation for temporary stay requirement is rarely honoured by the Dutch government. One of the results of this is that, in practice, even lawyers rarely appeal to this criterion because it basically never works.[47] As a result, out of desperation people have their children brought over illegally. Nonetheless, the Aliens Act Implementation Guidelines (B1/1.1.1) creates the option for the children to remain as they wait for the authorisation for temporary stay application. This is only allowed in cases of particular necessity, and additionally, the authorisation for temporary stay must still be picked up in the country of origin. This causes a number of children to end up staying illegally with their legal parents in the Netherlands. The question is whether their residence will every be legalised. These children run into a number of the problems which are dealt with below in chapter D on 'illegal' children.

A Bolivian man is married to a Dutch woman and they live in the Netherlands. The man has left his young son behind in Bolivia with his grandmother. The child's biological mother walked out on the family when he was 1 year old. The boy is now 15, and because the grandmother no longer can nor wishes to care for the boy the father and his wife have decided to bring him to the Netherlands. They very much want to do this and also possess the resources to care for him, but they do not have an authorisation for temporary stay, which will have to be picked up in Bolivia. However, the father cannot stay away from his work for 6 months and his wife has just had a baby. For these reasons they have appealed to the hardship clause. The aliens section has now ruled that there is a boarding school in Bolivia and that the boy will have to await the authorisation for temporary stay application there. (Source: DCI-NL Help Desk)

[45] AWB 99/2524.
[46] Den Uyl, 2000.
[47] This is evidenced by information from the Defence for Children International Netherlands (DCI-NL) Help Desk.

The KRC is alarmed by the fact that the Netherlands is the only EU country that enforces this term, with all the distressing consequences thereof.

3.5 Heavy burden of proof

Since 1 March 1998, when working instruction 161 became effective, the IND has placed a great deal of emphasis on being able to submit valid official documents. Recently, this policy was made tougher by Provisional Aliens Policy Report 2003/3 (TBV 2003/3). Refugees have a duty of authentication and verification. Not only are officially authenticated documents originating from the proper authorities required, but the content of these documents is also verified. This verification requirement applies to the following problem countries: Nigeria, Ghana, India, Pakistan and the Dominican Republic.[48] The refugee must plausibly demonstrate that any lack of official documentation evidencing his marriage and family-law relationships or the lack of valid identification of the family members is not his fault. If the statements are inconsistent or are not in keeping with what is stated in the Minister of Foreign Affairs' official country report, the application is rejected.

Under the former policy, applicants had to convincingly demonstrate the family relationship. Now the applicant must demonstrate that the woman and children are actually his wife and children. This is sometimes difficult. People often have no documents because the register of births, deaths and marriages in their country is not particularly well-maintained. A large number of children have no birth certificate. A March 2002 study by Unicef, *Birth registration, right from the start*, shows that 40% of children worldwide are not registered in a register of births, deaths and marriages. Thus, refugees often cannot supply the documents the Ministry of Justice requires of them, although they may undergo a DNA test.

The KRC is alarmed by this heavy burden of proof, which means that certain children are not eligible for admission into the Netherlands to join and be raised by their own parent(s). This is in violation of Articles 2 (principle of equality) and 10 (family reunification) of the Convention on the Rights of the Child.

3.6 Factual family relationship criterion

The Netherlands uses the factual family relationship criterion as opposed to the legal family relationship. Legal historical research by the Erasmus University Rotterdam has revealed that this criterion is in fact a mistake.[49] The introduction of the term 'factual family relationship' in 1982 was actually intended to broaden the set of family members, namely to make children other than biological children eligible for family reunification. Over the course of time it has been interpreted as a double requirement for family reunification with children.

This criterion is further elaborated upon in the Factual Family Relationship Policy Paper.[50] It states that parents residing in the Netherlands who have left their children behind in the country of origin for more than five years must prove that the 'factual family relationship criterion' is met: *it must be proven that despite the temporary separation, the family relationship with the child has actually continued to exist*. The question of whether the factual family relationship has been broken is assessed on the basis of a number of criteria, namely if the child has been taken into another family on a permanent basis, by which the parents are no longer charged with the authority over and/or no longer provide for the costs of rearing and care of the child. The Factual Family Relationship Policy Paper states:

[48] Government Gazette, 8 March 1996, no. 49, p. 2.
[49] Van Walsum, 2000.
[50] Policy paper on the application of the criterion of factual family relationship for the admission of minor children, 29/10/2001, Lower House 26732, no. 98, p.3.

Provisional Aliens Policy Report 2002/4:
Until five years after the separation of the parent(s) and the child, it is in principle assumed that the child actually belongs to the family of the parent(s)... However, this also means that after the passage of time it is assumed that the child is rooted in the country of origin, and that for this reason reunification with the parent(s) remaining in the Netherlands is not the preferred option... Exceptions are only made in one of the circumstances given on this (exhaustive) list:
a. There is no acceptable future for the child in the country of origin because the child's circumstances are of such nature that care by relatives by blood or marriage in the country of origin is impossible or objectionable.
b. The child was untraceable during a time of war, as a result of which it was impossible for the parent(s) residing in the Netherlands to arrange for the child to come to the Netherlands.

According to the then State Secretary of Justice Kalsbeek, the term of five years is intended to express the principle that, ideally, the parent and child belong together. But if over the years the family members have given no sign of desiring family reunification, she says, it can no longer be said that the Netherlands is the most appropriate place to bring this about. The State Secretary is under the impression that the term of five years must be sufficient to make the required preparations to bring the child to the Netherlands, and, additionally, that the five-year term is in the interest of Dutch society, since 'upon family reunification here in this country, the integration of those children (after 5 years (eds.)) will be very problematic.'

In some sense, the Factual Family Relationship Policy Paper does seem to actually relax the conditions on family reunification for the first five years. The factual family relationship remains enforced, but during the first 5 years the separation of parent and child will not be used as an argument against reunification. The conditions of the family law bond, the rightful authority, the financial resources requirement and public order all do remain applicable during this period. A large number of cases are being appealed in court in which the decision taken by the authorities under the former policy (prior to Provisional Aliens Policy Report 2002/4, effective date 22 March 2002) must still be reviewed, and thus where the actual family relationship will still be an issue even within the five year term.

A father from Turkey resides legally in the Netherlands. He brings his two children, a boy and a girl, to the Netherlands (presumably) in 1996. In 1996 the father applies for a residence permit for his children the first time with the goal of them being able to stay in the Netherlands. In November 2001, appeal proceedings are still pending which include an appeal to Articles 3 and 10, CRC. According to transitional law the old policy applies in this case. In 2001 the boy reaches the age of 18 and the girl 15. Nonetheless, an application for family reunification is rejected. The court reasons: 'The crucial fact is that the family relationship has broken... Article 3, CRC, stipulates that in all actions concerning children, the best interests of the child should be the primary consideration. Independent of the question of whether this provision has direct effect, the court is of the opinion that this does not entail that the best interests of the child are always and/or indisputably decisive. It must not be forgotten in this regard that since the rejection of their first application on 30 June 1997, the claimants have been aware that their residence in this country is not tolerated, and that despite this, by not leaving the Netherlands they have, as it were, increased the importance of their stay here in the full knowledge of their obligation to leave the country... In reference to Article 10, CRC, the court refers to the remarks of the Alien Affairs Legal Uniformity Division in its decision of 25 September 1997 (AWB 97/5074), specifically that neither the text nor the prosecution history of the CRC give any indication that Article 10 creates obligations on the part of the Dutch government extending beyond the provisions in Dutch law and policy on family formation and family reunification, nor has it been shown that this article is intended to expand the obligations under Article 8, ECHR...'

(Source: AWB 01/7436 VRWET (Aliens Act), 27 December 2001)

Once the term of five years expires, the family reunification becomes more restrictive. Previously a factual family relationship could continue over a longer period, at least in theory (by demonstrating the continued exercise of authority over and provision of the costs of living of the children). The stipulated term of five years is arbitrary and, certainly for refugees, usually not long enough. There is also an overly severe burden of proof on the applicant and this will lead to harrowing situations in which parents and children cannot be reunited. The Dutch government does not take into account circumstances such as those in which the initially travelling parent himself has a protracted asylum procedure to undergo. Merely the flight and the asylum procedure sometimes take five years, while the

five-year term begins from the moment of separation. To illustrate, nearly 10,000 asylum seekers currently in the reception programme have already been in the asylum procedure for four years.[51] Another fact not taken into account is that for personal reasons or reasons relating to the situation on the labour market, individual parents may not be able to obtain the required financial resources within the time limit. Furthermore, note that the amount of this financial resources requirement has been raised significantly under the Aliens Act 2000 (see 3.3 above).

The Dutch government assumes that if family reunification takes place after five years, the integration of the children in question will run into major problems. This, however, seems to be generally less of a problem the younger the children are, because younger children integrate more quickly and easily.[52] These considerations relating to integration are given without any substantiation in the Factual Family Relationship Policy Paper. Furthermore, it is often observed in practice that the realization of family life by parents residing in the Netherlands with their children is an important element of successful integration of newcomers to Dutch society, and this consideration does not lose its general validity after the term of five years.

A problem that arises in practice with some regularity is that parents do sometimes wish to restore a family relationship once considered broken. To do this, they must spend some time with the child in the country of origin. There is no formal policy in this area. The Actual Family Relationship policy paper leaves this problem unaddressed.

While we discuss whether Dutch biological parents/grandparents have the same rights of access to the children/grandchildren as the social parents, we require legal parents of non-Dutch nationality to prove the 'actual family relationship.' *(Source: Kruijen & Meuwese, 2002)*

The term 'factual family relationship' is not compatible with Dutch family law. Within Dutch family law, more and more attention has been given to the multiform ways in which family relationships between parents and children can be created and further develop. Family law is quick to assume the family life between parent and child, and that the right to contact must be vigilantly safeguarded. Only in very exceptional cases is the existence of a family relationship not assumed. Great importance is attached to the maintenance or restoration of the relationship between parents and children, even if this relationship has been temporarily broken and regardless of the age of the child. Dutch family law establishes that the simple fact that the parent in question does not take on primarily responsibility for the daily care of his or her child, and/or contributes little or nothing to the maintenance of the child or does not take part in important decisions regarding upbringing, never leads to the parent and child being deprived of their right to contact.

The Netherlands is the only EU country that recognises the broken family relationship criterion as an independent criterion. This is also corroborated by a 1999 study by ECRE (European Council on Refugees and Exiles). This makes the Netherlands exceptionally strict, because in other countries evidencing the legal relationship is sufficient to be granted the right to family reunification. Furthermore, the concept of factual family relationship does not correspond to the term 'family life' in Article 8, ECHR.

In 1977, at age 12, Zeki Sen comes to the Netherlands for family reunification. In 1982 he marries Gülden in Turkey; she continues living in Turkey and they have a daughter there, Sinem. In 1986 Gülden joins Zeki in the

[51] Van Walsum, 2002.

[52] European Court of Human Rights, 21 December 2001. In the Sen case, the European Court of Human Rights refers to the special interests of the child. The girl is, after all, just nine years old and in view of her young age the European Court rules that she can best grow up with her own parents. Thus, the court considers the question of whether there are family members in the country of origin who are willing and able to care for the girl irrelevant. As a response to this decision, the Government indicated that it did not intend to change Dutch family reunification policy. Source: letter of J.G. de Hoop Scheffer to the Speaker of the Lower House of the States General, 'Response to the request of Commission BUZA02319 on the Decision of the European Court of Human Rights in the Sen case,' 14 November 2002.

Netherlands. Sinem remains in Turkey and is entrusted to the care of a sister. In 1990, a second child is born. In 1992 the Sens apply for a residence permit for Sinem. They blame the fact that they did not do so earlier on relationship problems. Nonetheless, the request is denied, with the explanation that Sinem does not meet the requirements for family reunification because she has since been taken in by her aunt, and it has not been demonstrated that the Sens ever provided any financial or other support to Sinem; additionally, Article 8, ECHR, does not require that Sinem be given a residence permit. At the beginning of 1996, when all legal avenues in the Netherlands are exhausted, a complaint is submitted to the European Court of Human Rights. This complaint is sustained by the European Court of Human Rights in November 2000. The court observes that the bonds between Zeki and Gülden Sen on the one hand and their daughter on the other constitute a form of family life within the definition of Article 8, ECHR. After a weighing of interests, the European Court of Human Rights concludes that under these circumstances bringing Sinem to the Netherlands is the most appropriate method to develop a family life at a time in which, given Sinem's young age, it is of particular importance for her to grow up with her parents, who are also willing and able to take care of her.

(Source: European Court of Human Rights, 21 December 2001, No. 31465/96, Sen v. Nederland, *Nederlands Juristenblad*, 2002)

According to the European Court of Human Rights, the essence of the 'family life' principle (Article 8, ECHR) consists of the fact that children and parents must be able to share each other's company.[53] In the limited number of cases it has adjudicated, the European Court of Human Rights has, after a weighing of interests allowing broad leeway for states' policy, to a large degree sanctioned the outcome of the Dutch government's policy regarding the admission of children. In the Sen v. Netherlands case, the European Court of Human Rights concluded that there was no 'fair balance' as defined in Article 8, ECHR. In the case Ciliz v. Netherlands, the European Court of Human Rights called the Dutch government's refusal to continue admission for a non-caregiving parent a violation of family life. This leads to the conclusion that, at least in this case, the requirements relating to contact and maintenance obligation as provided in Dutch aliens policy do not withstand review against Article 8, ECHR. Very incidentally, a number of Dutch courts have ruled that given the circumstances of the matter in question, Article 8, ECHR was violated or that the State Secretary should have utilised his inherent discretionary power to make an exception.

The KRC believes that in the family reunification policy, the factual family relationship criterion (or, better said, breaking of factual family relationship criterion) must be abandoned. The term of 5 years before the criterion applies is too short, and the demonstration of a family relationship after the 5-year term is virtually impossible. The fact that, on this basis, family reunifications are being denied, even when in the best interests of the child, is a violation of Articles 2, 3, 9 and 10 of the Convention on the Rights of the Child, and puts the Netherlands out of step with the rest of Europe.

3.7 Other situations

State Secretary of Justice Kalsbeek's Policy Paper that preceded the family reunification policy states 'that other circumstances could always arise that would require subsequent reunification in the Netherlands in the best interests of the child.' This is a positive signal in accordance with the Convention on the Rights of the Child that specifically mentions the best interests of the child, and this also goes along with the trend that the 'best interests of the child' are increasingly acknowledged by the judiciary as review criteria in aliens policy.[54]

The policy document does not address the current policy regarding admission of children of polygamous relationships, but the Aliens Decree 2000 indicates that only children of a marriage can be admitted. Children from other marriages and other spouses (including cohabitation with a partner) cannot be admitted, in the interests of public order in the Netherlands.[55] Thus, the policy also entails

[53] European Court of Human Rights, 11 June 2000, RV 2000/20, with note, NJCM 2002, p. 253-262 (Ciliz v. Netherlands)
[54] Amongst others, see: decision of the District Court of The Hague, 27 November 1998, no. AWB 98/2573.
[55] Aliens Decree 2000, Article 3.16

that only the children of the woman who is admitted as the partner/spouse of the man in the Netherlands can be admitted to the Netherlands for reunification with their father.[56]

The KRC wishes to point out that even in these cases with regard to the other children at the very least an individual weighing of interests must take place in accordance with Article 8, ECHR and in light of the Convention on the Rights of the Child.

3.8 European developments

On 1 December 1999, the European Commission submitted a proposal for a European Directive[57]. This proposal is based on Article 63, paragraphs 3 and 4 of the Treaty of Amsterdam on the right to family reunification. The Directive is intended to establish unity in European policy on family reunification. Of particular relevance are an unequivocal definition of the term 'family' and the question of whether reunification with an unmarried partner should also be possible. The European Committee's proposal has already been amended twice (in 2000 and 2002) in consultation with the Member States. The European Directive on Family Reunification is expected to be completed in June 2003.

It appears as though the European Commission's initially positive proposal, which took refugees into account, has been gradually whittled away after two years of negotiations. This is partly due to the fact that provisions set out in the Directive prevent the member states from introducing conditions less beneficial than those existing at the time the Directive is approved (the 'standstill clause'). Of course, the more beneficial provisions of national legislation need not yield to those of the Directive.

The Netherlands has reservations on a number of points and is attempting to make the Directive more restrictive, including the subordination of Dutch citizens to EU citizens, the introduction of the term 'broken family relationship,' the extension of the decision period, and continuing to set conditions for the extended family reunification for refugees over 3-5 years. Additionally, the Dutch government has proposed to add 'integration conditions' to the Directive.[58] As an example, the Dutch government gives contributing to the payment of the costs of an obligatory integration course.

Finally, a number of member states have proposed to lower the age at which children can qualify for family reunification, arguing that older children have more difficulties integrating. Political consensus was reached on this point at the end of February 2003; only the Dutch parliament has yet to approve this. The Directive must be implemented in the national legislation within two years. The essence of the proposal is that for children above the age of 12 further conditions may be set for family reunification. However, none of these documents dealing with European harmonisation of family reunification policy make any mention of the Convention on the Rights of the Child, even though every EU country has ratified the Convention.[59]

> Children above the age of 12 can no longer come to the Netherlands for the purposes of family reunification. This is one of the arrangements made Tuesday by the CDA, LPF and VVD on future aliens policy. At present, children up to age 18 can be eligible for family reunification..
>
> (*Volkskrant,* 29 May 2002)

During the negotiations on the European Directive, the KRC called upon the Dutch government to not lower the age limit from 18 to 12. This would violate the Convention on the Rights of the Child, because in accordance with Article 1, CRC, the provisions of Articles 9 and 10, CRC, apply to all children under the age of 18, and moreover it would violate the principle of equality set out in Article

[56] Forum, Clara Wichmann Institute, DCI-NL, 2001.
[57] COM(1999) 638.
[58] Proposal 8209/01 MIGR 32.
[59] For example, see EU document SN 1322/03 on the 2489th session of the Council of Justice and Home Affairs, 27-28 Februari 2003.

2, CRC. The KRC also questioned whether the Dutch government's proposed establishment of significant financial barriers to family reunification was compatible with Article 8, ECHR.

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- Walsum, S.K., van, *De schaduw van de grens*: *het Nederlandse vreemdelingenbeleid en de sociale zekerheid van Javaanse Surinamers* ('The shadow of the border: Dutch aliens policy and the social assurance of Javanese Surinamese'), Gouda Quint, 2000.

D 'Illegal' children

4.1 General

In recent years increasing attention in politics and society has been focused on 'illegal' aliens in Dutch society: people without a legal resident status. The Benefit Entitlement Residence Status Act (*Koppelingswet*),[60] which, after years of preparation, became effective on 1 July 1998, initiated an extreme amount of debate on this population group. This act links the right to social services in the Netherlands to the valid possession of residence status. Without a residence permit, persons can only claim medically necessary care, education up to the age of eighteen and free legal assistance. The Benefit Entitlement Residence Status Act has meant that people without residence permits, including families with children, have to survive on the margins of society. The newly introduced Aliens Act 2000 (effective April 1 2001) and the Revised Return Policy (of 10 February 2000) also produce disastrous consequences for 'illegal' aliens in general, but especially for children.

Because 'illegal' aliens are an almost invisible group in society, it is difficult to estimate their numbers. Although there have been numerous studies, there is usually no age breakdown, so that very few figures are available on 'illegal' children in the Netherlands. The general estimates for 'illegal' aliens in the Netherlands range from at least 40,000[61] to 150,000[62]. A recent exploratory study of 'illegal' children in the Dutch educational system[63] gave an estimate of 10,000-20,000 children, although it must be noted that the number of 'illegal' children in the Netherlands who do not go to school is unknown.

For the purposes of this annex, 'illegal' children are defined as children up to 18 years of age who do not or do not yet possess a residence permit and do not/no longer receive government services. This group includes children of migrants residing in the Netherlands illegally (such as migrant workers) as well as the children of asylum seekers (including aliens who have exhausted all legal avenues in the asylum procedure)[64] who no longer receive government services. Asylum seekers still residing in the Netherlands legally also fall under this definition if they no longer receive government services, because in the opinion of the KRC these aliens have been 'illegalised.' Just as aliens residing illegally, they have no more right to central reception, income and other social benefits.

'Illegal' children can be classified into the following five groups:

- children of 'illegal' migrant workers (including 'white illegals' (*witte illegalen)*[65])
- children of refugees, including those who have exhausted all legal avenues
- children who have come to the Netherlands for family reunification
- women and children who had independent residence entitlement but have lost it
- unaccompanied minor 'illegal' children

Source: (Morelli & Braat, 1999)

The KRC deliberately places the term 'illegal' systematically in quotation marks in reference to children to indicate that children should not actually be treated as illegal; they must principally be

[60] Bulletin of Acts and Decrees 1998, 203.
[61] Van der Leun, Engbersen et al., 1998.
[62] Engbersen et al., 2002.
[63] Bommeljé & Braat, 2002.
[64] Asylum seekers who have not yet exhausted all legal avenues but who no longer receive government services may be people awaiting a decision on appeal with regard to the rejection of their residence permit application or people awaiting a repeat request for asylum. Despite the fact that this group resides in the Netherlands legally, they are deprived of government services, income and other social services. This group is also referred to as 'people with a weak residence entitlement.'
[65] 'White illegals' are migrant workers who have been able to work for years with a tax and social insurance number, thus 'white.' They had taxes withheld and paid social insurance premiums, thus living a semi-legal existence until the introduction of the Benefit Entitlement Residence Status Act, which deprived them of their tax and social insurance numbers and their rights to social services.

treated as children to whom the Convention on the Rights of the Child applies. Only secondarily can they also be treated as persons with rights to who the aliens policy applies.

The Dutch NGO Coalition for Children's Rights (KRC) finds the Dutch government's treatment of 'illegal' children disturbing. The following sections detail the most significantly troubling areas of the legal position and social situation of 'illegal' children in the Netherlands. The following topics are discussed: 'illegal' children's claims on the rights under the CRC (4.2); the interviewing of the children of asylum seekers (4.3); the repeat request for asylum (4.4); 'illegal' children's right to reception (4.5); 'illegal' children's right to education (4.6); 'illegal' children's right to health care (4.7); 'illegal' children's right to youth care (4.8); and finally 'illegal' children's independent right to residence (4.9).

4.2 'Illegal' children's rights under the CRC

Professor *mr.* T.P. Spijkerboer analysed 250 published judgments of the Council of State's Administrative Law Division. Upon his appointment as full professor in the Faculty of Law at the Universiteit van Amsterdam on 21 November 2002, he delivered an inaugural lecture in which he declared the following:
"The Council of State's Administrative Law Division, the high court in alien affairs, is using its judicial authority to play politics, thereby failing in its principle duty: to monitor and, where necessary, correct, the State Secretary of Justice, now Minister for Alien Affairs and Integration. The Council of State chooses to give the government leeway at the cost of the alien in search of justice. It does this in a number of ways, such as by shielding certain types of governmental activities from judicial supervision, by frequently using the test of "reasonableness" and, most significantly, by dismissing appeals lodged by aliens for "procedural errors." This comes at the price of protecting the human rights of the alien.' (Source: Spijkerboer, 2002)

Since April 2001, with the introduction of the Aliens Act 2000, the Council of State's Administrative Law Division (hereinafter: the Division) is the court competent for appeals on aliens affairs, making the Division the highest national court in alien affairs. In a judgment of 5 February 2002, the Division considered that:

'The Convention on the Rights of the Child, insofar as directly applicable, does not create claims for children whose parents are not allowed residence under Dutch aliens law and regulations.'
judgment no. 200106218/1

The Division's judgment here sets a negative precedent for all children of 'illegal' parents in the Netherlands. Since then, numerous appeals to the CRC by 'illegal' children have been rejected by lower courts with a reference to this passage from the judgment cited above.[66]

The KRC is extremely alarmed by this judgment of the Division and the precedent it sets. The KRC considers this judgment in conflict on at least two points with the obligations that the Dutch government accepted by ratifying the Convention on the Rights of the Child. Firstly, the Convention does in fact create claims for children whose parents are not allowed residence under Dutch aliens law and regulations. This follows from Article 2, CRC, which states that Dutch law may not discriminate in any way in guaranteeing and respecting the rights under the Convention. This applies to *all children under the jurisdiction* of the State Party. This means, therefore, that the Dutch government must guarantee and respect the rights under the Convention to all children living in the Netherlands, including 'illegal' children. Furthermore, Article 22, paragraph 1, CRC, entails that the States Parties to the CRC must take appropriate measures to ensure that a child receives appropriate protection and humanitarian assistance in the enjoyment of the rights described in the Convention.

Secondly, with this judgment the Division has made the interests (and rights) of all 'illegal' children in the Netherlands subordinate to Dutch admissions policy. This makes the Division's judgment in

[66] District Court of Arnhem, AWB 02/70407 and AWB 02/79413, 18 October 2002, Administrative Law Division, Council of State, 12 February 2003.

violation of Article 3, CRC, which states that in all actions concerning children (including those undertaken by judicial institutions), the best interests of the child must be a primary consideration. Although the Dutch government itself has indicated that the best interests of the child do not take absolute priority over other interests, it can be considered within the objectives of the CRC that in cases of conflict of interests, as a rule the best interests of the child should be the decisive factor.[67]

The following can also be remarked about the Division's use of the phrase '*The Convention on the Rights of the Child, insofar as directly applicable'* in its judgment. The Explanatory Memorandum to the Legislative Proposal for approval of the Convention[68] and case law indicate that a number of provisions of the CRC do have direct effect. The Explanatory Memorandum to the CRC states that Article 2, CRC has direct effect in view of its formulation and the fact that the provision is guaranteed in international law (Articles 2 and 26, International Covenant on Civil and Political Rights (ICCPR) and Article 14, ECHR). The courts have also ascribed direct effect[69] to Articles 3[70] and 9, paragraph 3, CRC[71]. Recently, the Division also acknowledged the direct effect of Article 37, opening lines and under (c), CRC.[72]

Finally, in a recent report on Dutch asylum policy[73], Human Rights Watch also expressed its concern on the Division's interpretation of the CRC and its scope. Human Rights Watch has also referred to the Dutch government's obligations under the CRC with regard to all children (thus, including 'illegal' children) in its territory:

> 'Human Rights Watch is deeply concerned with the Dutch courts' current interpretation of the applicability of the Convention on the Rights of the Child. Without derogating from its international obligations, the Netherlands cannot simply ignore its international and regional obligations to protect and care for migrant children in its territory... The Dutch government should make clear to all officials that the Convention on the Rights of the Child and other relevant international and regional instruments mandating minimum standards for the treatment of all children are applicable to migrant children regardless of their legal status.'
>
> (HRW, 2003)

4.3 The repeat request for asylum

> Five Kurdish children from Turkey, who have lived in the Netherlands since 1999, submit a repeat request for asylum. They do this on the basis of the fact that since their first asylum request in the Netherlands, their parents and three brothers and sisters have disappeared. They were also not interviewed independently during their first asylum request and no weighing of interests on the basis of the CRC ever took place. Additionally, the oldest brother has now reached the age of conscription, which means he will be forced to return to Turkey to fight in the Turkish army (which he will refuse to do). Finally, forcing the family to return to Turkey via Germany (where the once complete family previously lived) would inflict recurring trauma.
> First of all, the repeat request for asylum is rejected within 48 hours in the AC. The child family then appeals against the decision to the provisional Preliminary Relief Judge in The Hague. In a decision of 25 October 2002, the request for preliminary relief is rejected and the appeal is declared unfounded because 'in the view of this Court, the psychological circumstances argued by the Petitioners cannot be considered as new facts and circumstances... Germany has the same medical care facilities as the Netherlands...'
>
> (case file of lawyer G. Later reported to DCI-NL Help Desk)

[67] Lower House, 1992-1993, 22 855, no. 3, p.15. This has been reconfirmed by former State Secretary of Justice Cohen, in response to a report by Defence for Children International Netherlands (DCI-NL) on the position of statusless children in the Netherlands.
[68] Explanatory Memorandum, Lower House 1992-1993, 22 855, no. 3, p. 9, which is an article-by-article discussion of the potential direct effect of the provisions of Convention; and Annex 3 (table with corresponding articles of other conventions on human rights) to the Explanatory Memorandum, p. 55.
[69] Ruitenberg, 2003.
[70] District Court of Utrecht, 8 September 1999, NJ, 268; District Court of The Hague, 2 April 2002, AWB 00/68785, 00/68792, FJR 2002, District Court of Den Bosch, 20 February 2003, 89497/KG ZA 02/877.
[71] Central Appeals Court, 22 June 1999, Council of State 1999, 235.
[72] Administrative Law Division of the Council of State, 24 February 2003, 200300583/1.
[73] Human Rights Watch, 2003.

Pursuant to Article 6, Book 4, first paragraph, General Administrative Law Act, newly revealed facts or circumstances must be presented in a repeat request for asylum. Reasons for a new asylum request can include that applicants are able to present new evidence that they will be persecuted in their country of origin. If there are no such facts and circumstances, the request can be rejected pursuant to the second paragraph of Article 6, making reference to the previous decision. According to standing case law, newly revealed facts and circumstances are only deemed present if the facts and circumstances upon which the new application is based played no role in the decision-making on the previous application, nor could they have been presented in the previous instance[74]. Prof. Spijkerboer's analysis of the Division already referred to above[75] also examines the Division's application of Article 6, Book 4, General Administrative Law Act. He states that the Division applies this clause too strictly and overlooks the fact that it offers the Minister the option to dismiss, but does not mandate the dismissal of, a new request in which no new facts are adduced.

The KRC is concerned that even children are given a very heavy burden of proof for repeat requests for asylum, which ignores the interests, limitations and options of a child. This practice violates Article 3, CRC.

4.4 'Illegal' children's right to reception

> The Jones family – mother, father, and two brothers (ages one and six) arrived in the Netherlands from Rwanda in December 2002. They told authorities that they were victims of torture and had witnessed the killings of their families in massacres in 1994. In the fall of 2002, the perpetrators of these killings were released pending a decision on their cases as part of a programme to free up prison space. They threatened the Jones family with death and were said to have carried out murders of other witness living in the same village. The family then fled Rwanda, making their ways to the Netherlands where their application for asylum was processed in the AC-procedure. Upon arrival and throughout the AC-procedure the mother showed serious signs of trauma and psychological breakdown. The family was released from the asylum seekers´ centre once their application for asylum was rejected - a patently erroneous decision that was later reversed by the lower court on appeal. Their request for minimum reception conditions – basic shelter and food – had been flatly denied on the basis that applicants appealing a negative decision in the accelerated procedure do not have the right to any social assistance. Three days later when their appeal was heard and the IND's decision reversed, the family could not be found. (HRW, 2003)

Since 1998, the Dutch government has withheld the right to reception from certain groups of aliens. These groups are:

- Asylum seekers who have been ruled on negatively in the AC procedure and who are awaiting the result of appeal proceedings. As a result of the Revised Return Policy, which has been in force since 10 February 2002, this group is no longer entitled to social services including housing. They remain legally residing in the Netherlands and have not yet exhausted all legal avenues.
- Asylum seekers who have submitted a repeat request for asylum. Unless they are too sick to return to the country of origin or have a child younger than age 1, they are no longer entitled to reception (since a change in the Provisions Regulations for Certain Categories of Asylum Seekers (*Regeling Verstrekkingen Bepaalde categorieën vreemdelingen/*Rvb) on 9 October 1998). This group of asylum seekers also remains legally in the Netherlands and has not yet exhausted all available legal avenues.
- The group known as 'Technically Undeportable Aliens' (*Technisch Onverwijderbare Vreemdelingen/*TOVers). These are people whose asylum requests have been rejected, but do not yet have the required paperwork to be able to return to their country of origin. These may be people originating from countries such as China, Lebanon, Mauritania, Algeria, Somalia and Israel (especially the autonomous Palestinian areas). There are also countries that require return to be

[74] Amongst others, see: District Court of The Hague, seat Arnhem, 13 December 2002, AWB 02/74242 and 02/74243.
[75] Spijkerboer, 2002.

completely voluntary, such as Ethiopia, Syria, Eritrea and Iran. This group of asylum seekers has exhausted all legal avenues, but cannot return to the country of origin.

- Asylum seekers who have completely exhausted all legal avenues. Under the Revised Return Policy this group also loses its right to reception after a period of 28 days from the pronouncement of the ultimate negative ruling on appeal. There are two exceptions: firstly, if the asylum seeker is so sick that travel is impossible, and secondly, if the country of origin is a country currently under a travel ban (Iraq being one recent example).

As a consequence of this restricted reception policy, more people, including families with children, are ending up on the streets, and as a result alternative reception facilities are filled beyond capacity. Due to the lack of proper registration it is unclear just how large this group of children (with families) on the streets is. The organization INLIA (International Network of Local Initiatives for Asylum Seekers), which provides some alternative reception in the Netherlands, estimates the number of children (with families) at approximately 10,000 (in 2002).[76] It can be called paradoxical that at present there is no capacity problem with the central reception, while people who still reside in the Netherlands legally or cannot return must be received in the overfull alternative emergency reception. The municipalities also indicate that the problems surrounding the reception of this group of 'illegal' aliens is growing. They have fallen through the cracks between the restrictive government policy on the one hand and the local authorities' duty of care on the other.

The 28-day term also presents a great many problems in practice. Actually cooperating with the return and obtaining the correct documents often takes longer than 28 days. Additionally, some countries are completely uncooperative with the return of their subjects. The NIPO study cited in chapter A of this annexe reports that over 50% of Dutch people feel that there should be more reception for people who cannot return to their countries of origin.

In a number of individual cases[77] a district court has determined that under the Convention on the Rights of the Child, before terminating the services the government has a duty of care towards the children of refugees who have exhausted all legal avenues. In the opinion of the district court this duty of care is set out in Article 4 and Article 6, paragraph 2, CRC, although the District Court of Assen was of the opinion that the government's duty of care was met so long as the withholding of services to families was reported to the Child Protection Board. The District Court of The Hague[78] ruled that withholding services to a Chinese family with two children after the conclusion of the procedure (then 24 hours) was not a violation of the CRC[79]. Finally, on 18 October 2002 the Preliminary Relief Judge in Zwolle[80] rejected the claim for eviction from the Agency for the Reception of Asylum Seekers because if the family was evicted the parents would not be able to satisfy their duty of care towards their minor children.

The KRC finds it scandalous that when discontinuing social services, the Ministry of Justice views children as offshoots of the parents. Although the parents have the primary responsibility for the upbringing of the children, the CRC does extend independent rights to children. Article 4 entails that the government must undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. Also, Article 6, paragraph 2 stipulates that the government must ensure to the maximum extent possible the survival and development of the child. Additionally, Article 22 states that the government must take appropriate measures to ensure that a child seeking refugee status receives appropriate protection and humanitarian assistance. Article

[76] This estimate is based on the record of persons INLIA has provided reception for in 2003, which shows that 39.29% of the people coming to INLIA for reception are children. P. Postma notes that INLIA receives a relatively high number of requests from families. On the basis of IND figures, INLIA concludes that over the year 2002 26,127 people were put on the streets. Taking 39% of this number results in a total figure of 10,265 children.
[77] Such as Groningen, AWB 98/1152 and Assen, AWB 97-921.
[78] District Court of The Hague, AWB 98/8090.
[79] Morelli & Braat, 1999, p. 40, p. 101-103.
[80] AWB 78242 KG ZA 02-374.

27 states that the government must recognise the right of every child to an adequate standard of living and must provide support with regard to food, clothing and housing. Finally, Article 2, CRC, sets out the principle of equality. Various other human rights conventions and international organizations[81] recognise an alien's right to reception.

The KRC concludes that the present Dutch policy, in which reception is denied to children and families, is in violation of international standards.

4.5 'Illegal' children's right to health care

'We have a 13-year-old Moroccan girl with a severe case of scoliosis. It was really a bad one. A Dutch child would have been sent to hospital and operated on, but not that girl. But it could become life-threatening at any moment. It could affect the lungs. Through our network we were able to get photos taken, but we couldn't do anything more. We couldn't find a hospital for the operation. The girl actually has to go back to her country of origin, but they can't do every operation there.'

(Source: Respondent in Morelli & Braat study, 1999, p. 70-71)

With the introduction of the Benefit Entitlement Residence Status Act on 1 July 1998, it is no longer possible for an alien (and his or her family) to conclude **health insurance (whether under national insurance or a private policy) without a **residence permit or a written declaration (Article 9, Aliens Act 2000). Insurance policies held by 'illegal' aliens from before that time have since been cancelled. Article 10, Aliens Act 2000 states that 'illegal' aliens can now only claim collectively financed services for 'medically necessary care' or if necessary for reasons of public health. The Benefit Entitlement Residence Status Act provides two options to offer care providers financial compensation for providing care for 'illegal' aliens. The first allows care institutions such as hospitals a budget item for 'non-recoverable costs' (or 'bad debts') pursuant to the Health Care Charges Act. The other is the foundation *Stichting Koppeling*, which became operational on 1 July 1998, for other health care providers. This foundation oversees the fund *Koppelingsfonds gezondheidszorg.*

This fund finances care for 'illegal' aliens under the following conditions:

- The situation must be of a 'certain severity.' Such a situation arises in cases of unacceptable loss of income and/or harmful consequences on regular patient care.
- The care provider must plausibly demonstrate that the costs cannot be recovered from the 'illegal' alien himself or from third parties.
- The care provided must be financed under primary health care and the Exceptional Medical Expenses Act (which does not fall under 'bad debt')
- Payment is only made within the cost framework estimated in advance by a regional consultation platform of health care institutions. These platforms coordinate the invoices with *Stichting Koppeling*, and also have a spotter's function to put problematic issues concerning the care of 'illegal' aliens on the table.

(Source: Bommeljé & Braat, 2002)

As a side effect of their often poor socio-economic situation (including poor living conditions) and continual uncertainty on their residence in the Netherlands, 'illegal' children may suffer from psychosomatic symptoms such as fatigue, nausea and headaches, and along with these symptoms may of course come down with the same illnesses as any other child in the Netherlands. There is, however, an increased risk observed of tuberculosis and psychological problems such as stress and depression.[82]

Staring et al. (1998) note that 'illegal' aliens' access to medical care remains guaranteed by certain executive officials in health care institutions. Many doctors do see relieving health problems as their primary duty, regardless of the residence status of the person in question. Often, however, 'illegal' patients are not evenly distributed among the general practitioners in a municipality. In practice, most

[81] Article 11, International Convenant on Economic, Social and Cultural Rights, EU Council Directive laying down minimum standards for the reception of asylum seekers in Member States, The UN Special Rapporteur on Adequate Housing, The UN High Commissioner for Refugees (UNHCR).
[82] Burgers & Ten Dam, 1999; Morelli & Braat, 1999; Van den Muijsenbergh, 1999.

of the burden frequently falls on GPs who have their practices in neighbourhoods with established ethnic communities, although 'word of mouth' is also a factor. Aliens find out very quickly which doctors are willing to treat 'illegal' aliens for free or at a reduced rate. This concentration causes a disproportionate burden on some GPs, not only in terms of care but financially as well.

In other health care institutions, the fear of financial problems plays a role in whether 'illegal' patients are admitted or not. Moreover, many health care personnel are under the erroneous impression that they are only allowed to provide assistance in acute life-or-death situations, so it does happen that 'illegal' children are refused hospital admittance and treatment if the medical situation is not life-threatening. Thus in practice there seems to be no clear picture of what is to be understood by 'medically necessary care,' for which health care institutions can be reimbursed through the *Koppelingsfonds*.

Parents of 'illegal' children face financial problems if a child requires medication over a prolonged period. Parents must then purchase the medication themselves from the pharmacy with a prescription, and so these often very high costs are borne by the parents themselves. This is also the case when children are referred to a specialist in a hospital. Also, parents often wait far too long before taking their children to a doctor, and one reason may be that they do not have money.
Because 'illegal' families can no longer be insured for health care costs, they often use the health insurance papers of legal family members or acquaintances. This can cause medical files to become contaminated, which carries a number of related health risks for those patients.

Access to dental care for 'illegal' children in the Netherlands is not fully guaranteed. These children rarely visit the dentist, and hardly ever for preventative care. A number of years ago this preventative care was arranged through the schools, but this is no longer the case. Heath care providers report that 'illegal' children are often refused access to dental care because of inability to pay the bills and/or lack of health care insurance.[83]

Nor is access to psychiatric help fully guaranteed for 'illegal' children. Doctors cannot generally refer patients with psychosomatic complaints (psychological problems that express themselves in physical symptoms) to specialists, since this can rarely be classified as 'medically necessary care.' Whether 'illegal' children are admitted to mental health care institutions or not often depends on the network of the referring doctor and the policy of the individual institution.[84]

The KRC is alarmed by the fact that 'illegal' children in the Netherlands are (sometimes) denied complete access to the best possible level of health and services for the treatment of disease and the restoration of health. In so doing the Dutch government is violating Article 24, CRC. Moreover, no child whatsoever may be denied access to these services. Under Article 2, CRC, 'illegal' children are entitled to the same health care as other children.

4.6 'Illegal' children's right to youth care

Under Article 261, Book 1, Dutch Civil Code, a child can be placed in an institution outside of the home if the juvenile court judge rules that such placement is necessary in the interests of the care and upbringing of the minor or for the examination of his mental or physical condition. Even if the child does remain with the family, the juvenile court may take child protection measures. In this situation, the juvenile court judge may, pursuant to Article 254, Book 1, Dutch Civil Code, place the child under supervision if 'the minor's upbringing is such that his moral or mental interests or health are seriously threatened.' Further, Article 255, Book 1, Dutch Civil Code provides the option to take urgent measures, such as provisional guardianship, pending the investigation if such measures are urgently and immediately necessary. Given their isolated position and the social and economic deficiencies

[83] Bommeljé & Braat, 2002; Morelli & Braat, 1999.
[84] Burgers & Ten Dam, 1999.

they must face, it is obvious that children of 'illegal' families are extra vulnerable.[85] The (presently applicable) Youth Services Act does not distinguish between 'illegal' and 'non-illegal' children; however, Article 3 paragraph 1 of the draft Youth Care Act[86] excludes 'illegal' children from youth care.

At present there are approximately 160 'illegal' children in Amsterdam, Rotterdam, The Hague and Utrecht of whom it is known that they require urgent protection and care.[87] As a result of problems surrounding foster care for two Moroccan children, the Ministry of Justice informed the Youth Care Office Utrecht (*Bureau Jeugdzorg Utrecht*) that under the law, 'illegal' children have no right to youth care.[88] In the letter of 18 February 2003, the Minister of Aliens Affairs and Integration, in response to a letter from the Youth Care Office Utrecht, emphasised the position that aliens law in principle supersedes children's rights. According to this minister, 'the premise is that a child protection measure does not have the effect of granting status.' The Minister also takes the position that 'illegal' children have no right to youth care, although he indicates that there could be exceptions.

The KRC is outraged over the statements of the Minister of Alien Affairs and Integration concerning youth care and 'illegal' children. Youth care is also a right of 'illegal' children. The right to youth care follows from a number of articles of the CRC viewed in combination. Article 3 (the best interests of the child as guiding principle) states that all measures in the best interest of the child must be taken. The articles of the Convention also signify that parents are entitled to support in bringing up their children (Article 5 and 18, CRC) and that children victimised by exploitation, abuse and neglect are entitled to help (Article 39, CRC). Finally, Article 2, CRC extends equal access to the services of the convention to all children residing in the Netherlands, without discrimination. The current draft of the Youth Care Act thus violates international law including the Hague Convention on Children's Rights dating from 1961. There have now been rulings by the European Court of Human Rights in which the Court determined that neglecting to take adequate protective measures while the State was aware that children were being abused by their parents was a violation of Article 3 (anti-torture clause) of the European Convention on Human Rights[89].

4.7 'Illegal' children's right to education

> 'Children have to deliver newspapers. These are usually boys of 10 years of age or older. A large number of mothers also have to do illegal work at home, often in textiles, because the schoolbooks are very expensive. Then the children have to help for hours and hours in the evenings. Children of 8, 9 and 10 years old. We went to see a woman at home at about 8 o'clock and the children were working away very hard until 10 pm. This doesn't give a child of 8 any time to do homework. This is actually hidden child labour, but most families really need the money. And when they have to work for so long, they are often tired at school and it's only natural that they have concentration problems.' (Source: Respondent in Morelli & Braat study, 1999, p. 63)

Just as all other children in the Netherlands, 'illegal' children are entitled to education. This is stipulated in international law and regulations, with Article 28, CRC being just one example. The children also fall under scope of the Compulsory Education Act, which obliges them to be educated[90]. Under the Benefit Entitlement Residence Status Act children up to age 18 may begin education, and if their intake was before age 18, they are entitled to complete the education programme. However, being enrolled in an education programme does not stay deportation.

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[85] Forder, 2003.
[86] Lower House, 2001-2002, 8 February 2003.
[87] *NRC Handelsblad*, 8 February 2003.
[88] *NRC Handelsblad*, 19 February 2003.
[89] Z. v. VK, European Court of Human Rights, 10 May 2001, European Court of Human Rights, 2001, 46; E. v. VK, European Court of Human Rights, 6 November 2002, European Court of Human Rights, 2003, 14.
[90] Children are fully obliged to attend school as from turning age 4 until the moment that they have undergone twelve years of education, or the end of the school year in which they turn 16. After the full obligation to attend school, there follows 1 year of partial obligation to attend school (at least 2 days per week of education or training).

The number of 'illegal' students enrolled in education in the Netherlands is estimated at anywhere from 10,000 to 20,000 children. The education of this group of children is vital. It is good for their personal development, not only in terms of cognitive development but socio-emotional development as well. It also brings a sense of normalcy to their lives and gives it structure. Education is very important for children's mental development and also benefits society (safety in society, no dropouts, no youths hanging around on the streets). For 'illegal' children in the Netherlands, however, a number of problems impede the full utilization of their right to education.

Firstly, 'illegal' students have a financial problem. In practice, 'illegal' children are actually not entitled to tuition allowances or tuition waivers from the central government, which other children in the Netherlands are. 'Illegal' children also cannot make use of municipal services that other children in the Netherlands can (such as municipal funds for the poor). On the one hand, 'illegal' children in the Netherlands have the right and obligation to be educated, but at the same time these children are not given the means to be able to avail themselves of this right and meet this obligation. This is particularly a problem in secondary education, because costs of secondary education are relatively high and as from age 16 there is an obligation to pay school fees.[91] The restrictive aliens policy also sees to it that asylum seekers, whether still in the process or not, are ending up on the streets, and this of course complicates children's regular school attendance and gives rise to early school leaving.

> 'Look, the 28-day policy is putting so many people on the streets who move from town to town. These children can't go to school at all. Over the past year I've seen at least five cases where this was preventing children of primary school age from going to school.'
>
> (Respondent in the Bommeljé & Braat study, p. 47)

Another problem for 'illegal' children is the access to education. It has been shown that people in the field of education are insufficiently informed of the legislation and regulations surrounding 'illegal' children, and often do not know that 'illegal' children can enter a school programme until the age of 18. Some also think that it is illegal to allow 'illegal' children to attend class. This is one of the factors that blocks access to education by 'illegal' children. There are also practical problems, such as the lack of a tax and social insurance number, work permit, insurance and other documents, that make access to education by 'illegal' children not fully guaranteed. Lack of a work permit means that the block or day release vocational training courses (*beroepsbegeleidende leerweg* or BBL), whereby the majority of the school week (60%) consists of performing paid work under supervision, is in practical terms closed to 'illegal' children, even though this course programme would seem to be well-suited to 'illegal' youth (due to their deficiencies in theoretical terminology). The lack of documentation of the parents of 'illegal' children also sometimes means the schools lose out on funding, causing the schools to reject these children.[92]

Finally, the parents of 'illegal' children sometimes do not let them go to school for a number of reasons: for fear of being caught, because they do not know that the children may go to school or because they do not have enough money to pay the costs of school. The number of 'illegal' children there are in this situation is, however, unknown. School attendance officers can often not reach these children because they do not appear in the population register, and so cannot be called to come to school at the required age.[93]

The Dutch government acknowledges 'illegal' children's right to education, but believes:

[91] For the school year 2001-2002, school fees were EUR 852.20. NIBUD (2001) estimates the incidental costs of secondary education at EUR 472 per year for VMBO (lower secondary professional education), EUR 618 per year for HAVO (upper general secondary education) and EUR 623 per year for VWO (pre-university education).
[92] Bommeljé & Braat, 2002.
[93] Bommeljé & Braat, 2002; Morelli & Braat, 1999

'...if the condition of lawful residence in the Netherlands is set aside for the *buiteninvorderingstelling* (debt remission for outstanding school fees), this would undo too much of the applicable aliens policy. The government does not consider this desirable. Tuition for students without status should remain a matter for private initiatives, in which the government has no role.'

(Policy response to DCI report, 26 November 2002, PO/00/2002/56966).

The letter from the Minister of Education, Culture and Science[94] also shows that the government has no interest in a *Koppelingsfonds* for education, that 'illegal' children (or their parents) must contribute financially to the school fees and incidental costs. The effect of this policy response is that there are no facilities for 'illegal' students equal to those available to other children in the Netherlands. This is a violation of Article 2, CRC. The fear remains that 'illegal' children in the Netherlands still cannot yet fully utilize their right to education.

The KRC observes that the right to education and equal opportunities for all children in the Netherlands must be guaranteed as well as implemented *de facto.* The right to education is a hollow shell as long as 'illegal' children do not have the right to the same facilities (tuition allowances, suitable education and reception) as other children. At present, Dutch education policy with regard to 'illegal' children violates Article 2 and Article 28, paragraph 1, CRC.

4.8 'Illegal' children's independent right to residence

In 1999, then State Secretary of Justice M.J. Cohen composed a regulation entitling 'white illegals,' illegal aliens who had worked legally in the Netherlands for 6 consecutive years, to residence (Provisional Scheme for White Illegals, Provisional Aliens Policy Report 1999/23)[95]. In this scheme, applicants were first checked off on eight required criteria before being forwarded to a commission of mayors. This commission then reviewed the integration of the applicants.

Defence for Children International Netherlands stated that this regulation was not in accordance with the principles of the CRC, because the interests of the children of the 'white illegals' was not individually considered in the first assessment of the applications; it was only reviewed whether the parents met the 8 criteria. Nor were the children of the 'white illegals' given the opportunity to present their opinions, making the regulation in violation of Articles 3 and 12, CRC.[96]

Recently, there have been new calls in Dutch society for one-time immigration amnesty for a group of people, this time asylum seekers who remain in the Netherlands for a long period of time. In January 2003, the Minister of Aliens Affairs and Integration expressed the desire to use his discretionary powers to grant residence status in harrowing cases with regard to a group of approximately 2,000 asylum seekers. The parliamentary party LPF presented a proposal to accomplish this with a scheme in which the IND would reopen the files of a group of refugees. Many welfare workers, lawyers, alternative reception institutions and refugee organizations deluged the Minister with requests to grant residence status to clients who had exhausted all legal avenues. For the time being, there have been no commitments made by the now outgoing Minister. The development of the proposal will have to wait until after the formation of a new cabinet.

'Thirteen illegal aliens in Amsterdam have now been on a hunger strike for 35 days. Their demand: a residence permit. These people have been here for years.'[97]

(*Volkskrant*, 24 April 2003)

[94] Lower House 25828/19 637, no. 21.

[95] The background of this regulation lay in the fact that the Dutch government had created a semblance of legality by tolerating the residence of these migrants, and more to the point these people had met statutory obligations such as the payment of tax and social insurance premiums..

[96] Braat & Meuwese, 2001

[97] Subsequently, this group of 'white illegals' ended their hunger strike after more than 50 days. They are now awaiting a new assessment of their files.

The KRC is of the opinion that children under certain circumstances (even though they should in principle follow the parents in place of residence) children are independently entitled to residence in the Netherlands. This requires a careful weighing of the best interests of the child, in accordance with Article 3, CRC, must be carefully weighed. The best interests of the child can be interpreted using the following criteria:

- adequate care of the child;
- a safe physical environment;
- continuity and stability;
- respect for the child and engagement in his or her life;
- taking the needs of the child seriously;
- the security of at least one adult;
- a broad range of education opportunities;
- the potential for contact with family and peers;
- knowledge of the child's own background.

Heiner & Bartels (*FJR* 3, 1989)

Examples of a weighing of interests may be that a child has a physical or mental condition for which there is no adequate care available in the country of origin. In this case, residence in the Netherlands for the entire family may be called for.[98] Another example may be children in the Netherlands who are 'integrated as children,' for example due to relatively long residence in the Netherlands, being born in the Netherlands, having Dutch friends and acquaintances, long-term school attendance, the ability to speak Dutch well, little or no contact with the country of origin, membership in a club, etc. In circumstances such as these a child is so rooted in Dutch society that the interest of the Dutch state in conducting a restrictive admissions policy must yield to the best interests of the child in residence in the Netherlands. For this reason the District Court of The Hague[99] determined that a mother from the Philippines had to be admitted because the daughter's interest in continued residence in the Netherlands was of such significance that it took precedence over the interests of the Dutch state. Additionally, children usually benefit from continuity and stability in their current family situation in the Netherlands, and forced deportation of children can lead to regression in their socio-emotional development and can cause phobias and psychosomatic symptoms.[100]

The KRC is alarmed that existing case law shows that the courts are not basing residence decisions on the best interests of the child[101], thus acting contrary to Article 3, CRC. The CRC is of the opinion that if children are integrated into the Netherlands, they have built up a moral residence entitlement that, in keeping with the spirit of the CRC, must be legally affirmed by granting residence entitlement.

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E Other topics

5.1 Interviewing asylum seeking children

The interviewing of unaccompanied asylum seeking minors has already been described in sections 2.3 and 2.4 of chapter B. Unaccompanied asylum seeking minors aged 4 and older are interviewed for their asylum application procedures. This is in accordance with Article 12, CRC, which states that children have the right to be heard in all matters affecting them. It should be noted, however, that the interviewing of unaccompanied asylum seeking minors in the Netherlands is compulsory and their statements have far-reaching consequences, without the mental and physical development of the child being not taken into account. When adults with children submit an asylum request for the family, the children are included in the asylum request. Children under 11 are then not interviewed individually, minors from 12-15 inclusive are only interviewed at their own request and children 16-17 are required to be interviewed for the asylum application.

In practice[102] it is apparent that in aliens law procedures, children in families are often viewed as 'appendages' of their parents and not considered as independent interested parties, even though children have independent interests in all matters concerning them and different factors may play a role for them than for their parents, such as having Dutch friends, the school programme, and the command of the Dutch language. In order to meet an *ex officio* review of Article 3, CRC, these interests of children must be carefully catalogued. To do this the children need to be able to form and express their own opinions to be interviewed in accordance with Article 12, CRC.

The KRC is alarmed about the current asylum practice in which, in violation of Article 12, paragraph 1, CRC, children up to age 15 are not independently interviewed in family asylum applications, and that, consequently, due weight is not given to the opinions of these children.

5.2 Detention of children

Grenshospitium

> The actual situation in the Grenshospitium atTafelbergweg in 2000:[103]
> There is an enormous barbed-wire fence around the building and every door that opens closes and locks behind you. The area has a separate building where asylum seekers have freedom of movement. In comparison to the Application Centres (ACs), the building has more services. There are 96 small rooms with bunk beds and a maximum capacity of 125 persons. There is also a creative area, a prayer area, library, outdoor tennis court, 2 open air areas and a gymnasium. For children there is a special area with toys and a video recorder, and there are also special activities organized for them. (Bommeljé, 2001)

The Grenshospitium, in the vicinity of Schiphol Airport, has been in operation since April 1992. The Grenshospitium, literally 'border hospice,' is a euphemistic name for what is in reality more of a border prison. This is where aliens arriving at Schiphol airport are locked up, to whom access to the Netherlands is refused and who cannot immediately be deported. The majority of these people are aliens whose asylum request has been denied in the Application Centre at Schiphol. Some of them are still involved in appeal proceedings against this denial. When there are no more appeals, the aliens await deportation to their countries of origin (or another country to which they can be admitted) or transfer to the 'Dublin country' which, pursuant to the Dublin Convention[104], is responsible for the substantive assessment of the asylum request. There is no debate on the fact that holding people in an institution like the Grenshospitium is a form of detention. In this case, the aliens are detained under

[102] This is shown by a large number of case files submitted by lawyers to Defence for Children International Netherlands.
[103] This branch was closed in 2001 and reopened in 2002.
[104] The Dublin Convention stipulates that refugees must submit an asylum request in the country in which they first arrive. If they do not do this and then travel on to another country to request asylum, then in principle the asylum request is not processed..

Article 6, paragraphs 1 and 2, Aliens Act 2000. These provisions give broad authority for the deprivation of liberty of aliens who are not granted access to the Netherlands.

At present the Grenshospitium has a primary site at the 'Bijlmerbajes' in Amsterdam (Overamstel), with a capacity of approximately 150, and a branch on Tafelbergweg, also in Amsterdam, with a capacity of ultimately 120. The latter location was previously used as a Grenshospitium and was opened again at the end of 2002 for certain types of asylum seekers, including all families. This is also where children, together with one or both parents (or other adult family members) are transferred to the Grenshospitium after denial at AC Schiphol. In both branches, there are also a small number of young people who have registered at Schiphol as unaccompanied asylum seeking minors and who are to undergo an age examination for the asylum procedure.

The operation of the Grenshospitium is not the responsibility of the IND, but of the Custodial Institutions Service (*Dienst Justitiële Inrichtingen*/DJI), and this has an effect on the regime enforced in the Grenshospitium. Different rules apply. For example, residents can perform work for a nominal fee, although they are not obliged to.[105] The living conditions at the Tafelbergweg branch of the Grenshospitium are open to criticism on the following points:[106]

- the situation resembles that of a prison;
- freedom of movement is thoroughly restricted; the cells are locked at night
- residents (including children) are frisked upon arrival and may also be frisked after receiving visitors.
- the atmosphere is tense; this results in suicide attempts, hunger strikes and disobedience, and violent escape attempts;
- medical and psychological services are available to a limited degree and access is restricted; there are no social services available
- the reception of unaccompanied asylum seeking minors is not separated from that of adults;
- children are handled by personnel not trained for working with children;
- there is a lack of privacy (for example, privacy of correspondence is not observed);
- contacts with the outside world are limited;
- educational services are limited to 14 hours per week and are of low level

Application Centres
All children submitting an asylum request (with or without their parents) are held for a number of days at an Application Centre. If this happens at Schiphol, it is generally considered a form of detention that, just as being held at the Grenshospitium, is lawful under Article 6, Aliens Act 2000.
Detention in one of the internal ACs (Rijsbergen, Zevenaar and Ter Apel), however, is not justified under any provision of law. For some time there was debate on whether residence in the internal ACs also qualified as deprivation of liberty. The Appeal Court of The Hague ruled on 31 October 2002 that accommodation in the internal ACs must be considered as deprivation of liberty (00/68 KG, NAV 2002/291).[107] In order to dispel this character of detention, the Minister announced a provisional aliens law decision (*tussentijdse **beschikking vreemdelingenrecht*/TBV) on 2 December 2002, 'so that asylum seekers are given the opportunity to leave the internal ACs when their availability is not necessary for the investigation into the allowability of the application. It is assumed that availability of the asylum seeker remains necessary during working hours [*procesuren*] (from 7:30 am to 10:00 pm).' There has not yet been a court ruling on whether with this new scheme, residence in an internal AC is indeed no longer qualified as detention.

Departure centres
Two departure centres are expected to be opened in May 2003, one near Schiphol airport and one in Rotterdam, with a collective capacity of 300 persons, and the potential for later expansion to a

[105] Bommeljé, 2001.
[106] Based on information from the Dutch Refugee Council, May 2003
[107] Incidentally, both parties in these proceedings have appealed this decision in cassation.

capacity of 600 persons. Aliens who are expected to be deportable within four weeks will be held in these departure centres, and that may also include families.[108]

The KRC is extremely alarmed about the situation in the Grenshospitium, all the ACs and the departure centres. In these centres, children are the victims of detention simply for belonging to a particular category of aliens and irrespective of their individual circumstances. There is (and will be) in many cases deprivation of liberty that is not a last resort because other alternatives are available. As a rule, there are no compelling reasons justifying the detention of children. These measures are disproportionate and the needs of (sometimes very young) children are not taken into account, and thus in violation of Article 37 (b) and (c), CRC. Furthermore, these measures are not in the best interests of the child (Article 3, CRC) and in applying these measures the state is not ensuring the survival and development of the child to the maximum extent possible (Article 6, CRC). Moreover the living conditions at the Grenshospitium do not meet the standards that should be set for them; as an example, the right to education under Article 28, CRC, is not suitably met. The living conditions in the departure centres have yet to be assessed against the CRC.

5.3 Children of asylum seekers in the Asylum Seekers Residence Centres (AZC's)

An estimated 30,000 children of asylum seekers were living in Asylum Seekers Residence Centres in the Netherlands in 2002. As a result of the drop in asylum requests, this number has fallen since then, but is still estimated at between 10,000 and 20,000 children.[109] These may be children born in an Asylum Seekers Residence Centre and who spend a significant part of their youth-- sometimes 10 years-- there; not only do the facilities leave something to be desired, but the uncertainty of their outlook is also a heavy burden. Asylum seekers and their children are also frequently transferred to other Asylum Seekers Residence Centres. When that happens, the children must readjust in a number of ways, including going to a new school and finding new friends. This is a break in the child's development.

> Safika and Kobra met in the Asylum Seekers Residence Centre in Osdorp. Both women fled from Afghanistan with their families and have now lived in the Netherlands in the same Asylum Seekers Residence Centre for almost 3 years. Life in the Asylum Seekers Residence Centre is difficult: 'There is not enough room for far too many people,' says Shafika. 'This situation is really bad for us. I sleep together with two children in one room. Another child sleeps with my father-in-law. The child doesn't get enough rest, because my father-in-law has to go to the toilet a lot at night.'... In the house where Shafika lives there are four small bedrooms and a small living room with an open kitchen. Along with Shafika, her husband, her father-in-law and her four children, an Armenian woman and her child also live there. They cannot communicate with each other, which causes frequent conflicts... Shafika's children suffer from psychological problems because of their living conditions in the Asylum Seekers Residence Centre. 'The children are always emotional and are always fighting. There is not enough room for them. They also have trouble sleeping.'
>
> (Source: Metselaar, 2002, p. 35-36)

The KRC is disturbed about long-term residence of children in Asylum Seekers Residence Centres and fears that this can have harmful consequences on the development of the child. Also, the many transfers of children with their parents are not beneficial to the development of the child. The KRC believes that this is in violation of the CRC.

5.4 Financial position of asylum seekers

The parents of the children receive a limited financial supplement. Additionally, under the Foreign Nationals Employment Act, persons without residence permit entitling free access to the labour market

[108] Based on a letter from the Minister for Aliens Affairs and Immigration, 20 December 2003 (Lower House 28 600 VI, no. 120) and supplemental information from the Dutch Refugee Council in May 2003.
[109] This estimate is based on a telephone conversation with P. Abspoel of Refugee Organizations in the Netherlands.

and without work permit are prohibited from working. The amount of the financial supplement is set out in the 1997 Asylum Seekers Provision Regulations. The table below compares the financial supplement received by asylum seekers and the standards established for the costs of a sound nutritional diet per person by NIBUD, the National Institute for Budget Information, an information and advising bureau on consumer financial matters.

Table 1: Overview of weekly amounts in euro for asylum seekers in central reception

	self-cooking		cook own breakfast and lunch		do not cook own meals	
	weekly allowance	of which for food	weekly allowance	**of which for food**	weekly allowance	**of which for food**
age 0-10	7.26	3.63	5.00	**1.37**	3.63	**0**
age 11-17	11.35	5.90	7.27	**1.82**	5.45	**0**
adult	39.04	23.15	28.15	**12.26**	15.89	**0**
single parent allowance	26.32	15.88	20.88	**10.44**	10.44	**0**
underage asylum seeking minor	31.77	19.06	22.70	**9.99**	12.71	**0**

Table 2: Overview of costs for food, per person and per meal (NIBUD 2002)

	breakfast	sandwich/ lunch	hot meal	snack	**total per day**	total per week	**total per week excluding hot meal**
Toddler age 1-3	0.26	0.43	1.32	0.68	**2.69**	18.83	**9.59**
Child age 4-6	0.32	0.59	1.75	0.87	3.52	**24.64**	**12.39**
Child age 7-9	0.35	0.74	1.94	0.96	3.99	**27.93**	**14.35**
Child age 13-15	0.44	0.89	2.30	1.33	4.97	**34.79**	**18.69**
Child age 16-18	0.40	0.98	2.29	1.50	5.18	**36.26**	**20.23**
Adult	0.36	0.91	2.27	1.47	5.00	**35.00**	**19.11**

The table is based on the costs of a two-person household. NIBUD indicates that for single persons the costs are 4% higher, for three-person households they are 17% lower per person and for four-person households, 26% lower per person. Most asylum seekers are able to cook for themselves in their residence (first column). In centres where meals are cooked for the asylum seekers, the adjusted amounts apply (second and third columns).

When the columns in bold face from each table are compared, this clearly shows that in all cases, asylum seekers receive too little money to provide for a responsible diet. In particular, the amount for children is much too low. Even if parents spend the entire child supplement on food (which means no diapers, toothpaste, public transportation tickets or toys), it is still not enough.[110]

> Kobra (from the previous example --*eds.*) also has significant space and privacy problems in the Asylum Seekers Residence Centre in Osdorp. There are four bedrooms for 10 people. 'My oldest is almost eighteen and the youngest is almost 4.' Her family has to get along on 150 euro per week. 'Each child gets 16 euro. For everything! The door on the cabinet just broke, and the Agency for the Reception of Asylum Seekers fined us 120 euro for the repair. How are we supposed to pay that?' (Source: Metselaar, 2002, p. 36)

KRC considers the fact that children of asylum seekers receive one-fourth less than they need according to NIBUD for a healthy diet a violation of the principle of equality (Article 2, CRC) and the state's duty to ensure the development of the child to the maximum extent possible (Article 6, CRC).

5.5 Legal aid

[110] Dutch Refugee Council, 2002.

The results of the work of lawyer Gerda Later suffer due to the attitude of IND and she finds that the worst part--for her clients, that is. Children are also the victims. They talk about security, but they create desperate hard cases. She does selected cases. Others sort out the wheat from the chaff for her, she doesn't get to hear the chit-chat, she handles the serious cases. 'I used to win 90 percent,' she says. 'Now it's maybe ten.' (Source: *Trouw,* 20 December 2002)

Lawyers have little noticed the drop in the number of asylum requests. Some cases go on for seven years. It may also happen that the introduction of restrictive asylum policies in other European countries will turn the current decrease in the Netherlands back into an increase. Additionally, the increasing percentage of requests that are processed in the 48-hour AC procedure means an increase of appeal cases for the asylum lawyer, and this is causing an overflow of cases for asylum lawyers. The KRC is alarmed about the fact that the lawyers are frequently overburdened. In practice, this has the side effect that many asylum seekers' cases fail because the appeal is not submitted on time or due to procedural errors. Additionally, it is observed that there is still too little awareness of the Convention on the Rights of the Child among lawyers and within the judiciary. The KRC is, however, encouraged by the fact that awareness of the Convention is being steadily increased by workshops and the like. These types of initiatives are resulting in a growing awareness of the Convention.

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F Recommendations to the Dutch Government

Recommendations to the Dutch Government

A. General

- Dutch aliens policy must not conflict with the CRC. In establishing and enforcing the aliens policy, the best interests of the child, elaborated and defined in detail, must play a decisive role.

B. Unaccompanied asylum seeking minors

Admission

- Do not process the asylum requests of minors within 48 hours at the reporting office. They should first be afforded some time to rest in order to acclimatise.
- The children must be properly prepared for their asylum interviews.
- During the asylum interviews, a counsellor who can adequately support the child must be present.
- Interpret children's opinions consistently in the asylum procedure.
- Only interview under-twelves about their reasons for seeking asylum if they are underage asylum seeking minors requesting asylum completely independently. If not, limit the interview to the oldest sibling, with the option for the guardian to contribute information on behalf of the young child.
- Children should be interviewed by specialised staff who can take into account the mental and physical development of the child.
- Investigate the quality of the care provided by the supervisors of supervised underage asylum seeking minors.
- Process supervised underage asylum seeking minors under the underage asylum seeking minors policy, despite the fact that they have supervisors.

Age examination

- Set up an external commission to oversee the ethical and scientific standards of the age investigation.
- Discontinue the collarbone method of age investigation insofar as it is used to reach any conclusion other than the determination that if the collarbone is fused at the time of bone measurement, the subject is older than 20 years.

Ruling

- Investigate a basis for refugee status geared to children.

Reception

- Assistance provided at underage asylum seeking minor campuses must be brought into line with national and international regulations.
- In the return model, sufficient and adequate counselling with respect for the individual is of vital importance.
- The reception of underage asylum seeking minors must at least meet the quality standards set out in the Youth Services Act.

Return

- Investigate the options for return, in cooperation with the child, before sending the child back.

C. Family reunification

- Adjust the high fees.
- Extend the follow-on travel period for family reunification.
- Drop the family relationship criteria and extend the right to be reunited with the parents in principle to all children, regardless of age. The best interests of the child must be taken into account.
- Apply the hardship clause for the waiver of the authorisation for temporary stay requirement more often.
- Correct the translation of Article 10, CRC.

D. 'Illegal' children

- Allow minors living in the Netherlands - regardless of their residence status - to use the same services as Dutch children.

- Children must not be put out on the streets.
- The government must be more forthcoming on the right to education of children without a legal resident status.
- The right to youth care must be maintained for all children (underage asylum seeking minors, children without a legal resident status and children in the Asylum Seekers Residence Centres).

Claim to residence

- Children born in the Netherlands and children who are integrated in Dutch society have an independent claim to residence.
- If a child may stay, so may the parents.

E. Other topics

Deprivation of liberty

- Cease depriving minors of their liberty in the *Grenshospitium*. Alternatives must be sought.

Interviewing children with parent(s)

- All children travelling with parent(s) must be interviewed about their situation if they so desire.

Children in Asylum Seekers Residence Centres

- Residence of children with parents and unaccompanied asylum seeking minors in Asylum Seekers Residence Centres must be brief and take place under better conditions.

The financial position of children of asylum seekers

- Asylum seekers must be given financial resources in accordance with the norm identified by NIBUD, so that they can provide their children with adequate nutrition.

List of abbreviations

Abbreviation	*Dutch*	*English*
ABRvS	Afdeling Bestuursrechtspraak Raad van State	Administrative Law Division of the Council of State
AC	Aanmeldcentrum	Application Centre
AMA	Alleenstaande Minderjarige Asielzoeker	Unaccompanied asylum seeking minor
AZC	Asielzoekerscentrum	Asylum Seekers Residence Centre
Awb	Algemene wet bestuursrecht	General Administrative Law Act
AWBZ	Algemene Wet Bijzondere Ziektekosten	Exceptional Medical Expenses Act
BAMA	Begeleide Minderjarige Asielzoeker	Supervised underage asylum seeking minor
BBL	Beroepsbegeleidende Leerweg	Block or day vocational training courses
BuZa	Buitenlandse Zaken	(Ministry of) Foreign Affairs
CBS	Centraal Bureau voor Statistiek	Central Bureau of Statistics
CDA	Christen Democratisch Appel	CDA
COA	Centraal Orgaan Opvang Asielzoekers	Agency for the Reception of Asylum Seekers
CRvB	Centrale Raad van Beroep	Central Appeals Court
DCI-NL	Defence for Children International Nederland	Defence for Children International Netherlands
DJI	Dienst Justitiële Inrichtingen	Custodial Institutions Service
DNA		Deoxyribonucleic acid
ECRE		European Council on Refugees and Exiles
ECRM	Europese Commissie voor de Rechten van de Mens	European Commission for Human Rights
EHRM	Europees Hof voor de Rechten van de Mens	European Court of Human Rights
EU	Europese Unie	European Union
EVRM	Europees Verdrag tot bescherming van de Rechten van de Mens en Fundamentele Vrijheden	European Convention on Human Rights
Havo	Hoger algemeen voortgezet onderwijs	Secondary education (middle level)
HRW		Human Rights Watch
IND	Immigratie en Naturalisatie Dienst	Immigration and Naturalisation Service
IOM	Internationale Organisatie voor Migratie	International Migration Organization
ITS	Instituut voor Toegepaste Sociale wetenschappen	Institute for Applied Social Sciences
IVBPR	Internationaal Verdrag inzake Burgerlijke en Politieke Rechten	International Covenant on Civil and Political Rights
KG	Kort geding	Preliminary Relief Proceedings
KRC	Kinderrechtencollectief	Dutch NGO Coalition for Children's Rights
KWE	Kleine wooneenheid	Small Residential Unit
LJN-nummer	Landelijk Jurisprudentienummer	National Case Law Number
LPF	Lijst Pim Fortuyn	LPF (Political Party Pim Fortuyn)
m. nt,	met noot	with note
MOB	Met Onbekende Bestemming	For Unknown Destination

MvT	Memorie van Toelichting	Explanatory Memorandum
MVV	Machtiging tot Voorlopig Verblijf	Authorisation for Temporary Stay
NGO	Non gouvernementele organisatie	Non-governmental Organization (NGO)
NIBUD	Nationaal Instituut voor Budgetvoorlichting	National Institute for Budget Information
NJCM	Nederlands Juristen Comité voor de Mensenrechten	International Commission of Jurists – Dutch branch
NOVA	Nieuw gebleken feiten en omstandigheden	Newly demonstrated facts and circumstances
OC	Onderzoekscentrum	Examination centre
OCenW	Onderwijs, Cultuur en Wetenschappen	(Ministry of) Education, Culture and Science
OSW	Ontwikkelingssamenwerking	Development Cooperation
p.	Pagina	Page
par.	Paragraaf	Section
Rb.	Rechtbank	District Court
Rva	Regeling verstrekkingen asielzoekers	Asylum Seekers Provisions Regulations
Rvb	Regeling verstrekkingen bepaalde categorieën asielzoekers	Provisions Regulations for Certain Categories of Asylum Seekers
RvS	Raad van State	Council of State
SAMAH	Stichting Alleenstaande Minderjarige Asielzoekers Humanitas	Unaccompanied Asylum Seeking Minor Humanitarian Foundation
SRA	Stichting Rechtsbijstand Asielzoekers	Asylum Seekers Legal Advice Centre
Stb	Staatsblad	Bulletin of Acts and Decrees
STV	Stichting Tegen Vrouwenhandel	Foundation Against Trafficking in Women
TBN	Tussentijds Bericht Nationaliteiten	Provisional Nationality Report
TBV	Tussentijds Bericht Vreemdelingenbeleid	Provisional Aliens Policy Report
TOVers	Technisch onverwijderbare vreemdelingen	Technically Unremovable Aliens
TK	Tweede Kamer	Lower House of Parliament
TNS NIPO	Het Nederlands Instituut voor de Publieke Opinie en Marktonderzoek	Dutch Institute for Public Opinion Survey and Market Research
twv	tewerkstellingsvergunning	work permit (for non-EU nationals)
UK		United Kingdom
UNHCR		United Nations High Commissioner on Refugees
v.		Versus
VAJN	Vereniging Asieladvocaten en juristen Nederland	Dutch Association of Asylum Lawyers and Jurists
Vb2000	Vreemdelingenbesluit 2000	Aliens Decree 2000
Vc2000	Vreemdelingencirculaire 2000	Aliens Act Implementation Guidelines 2000
VenI	Vreemdelingzaken en Integratie	(Ministry of) Aliens Affairs and Integration
Vmbo	Voorbereidend middelbaar beroepsonderwijs	Lower secondary professional education
VN	Verenigde Naties	United Nations
VON	Vluchtelingen-Organisaties Nederland	Refugee Organizations in the

		Netherlands
VRK	Verdrag inzake de Rechten van het Kind	Convention on the Rights of the Child (CRC)
VTV-AMA	vergunning tot verblijf op grond van het AMA-beleid	temporary residence permit under the unaccompanied asylum seeking minor policy
VVD	Volkspartij voor Vrijheid en Democratie	VVD
VW2000	Vreemdelingenwet 2000	Aliens Act 2000
VWN	VluchtelingenWerk Nederland	Dutch Refugee Council
Vwo	Voortgezet wetenschappelijk onderwijs	Seconday education (highest level)
WAV	Wet Arbeid Vreemdelingen	Foreign Nationals Employment Act
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum	Research and Documentation Centre of the Ministry of Justice
WTG	Wet tarieven gezondheidszorg	Health Care Charges Act
ZA	zaak	case number