

A photograph of a person's head and shoulders in profile, looking out of a window. The person has dark, curly hair and is wearing a dark jacket. The window frame is visible, and the background shows a blurred cityscape with buildings and a tree.

## Child-sensitive return

Upholding the best interests of refugee and migrant children in return decisions and processes in the Netherlands

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unicef 

## A UNICEF Netherlands/PFP project

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## LIST OF ACRONYMS

AA	Algemene Asielprocedure (General Asylum Procedure)
AIVM	Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel (Dutch Aliens Police)
Benelux	Belgium, the Netherlands and Luxemburg
BIA	Best Interests Assessment
BID	Best Interests Determination
COA	Centraal Orgaan opvang Asielzoekers (Central Agency for the Reception of Asylum Seekers)
COI	Country of Origin Information
COL	Centrale Ontvangstlocatie (Central Reception Centre)
DCI	Defence for Children International
DT&V	Dienst Terugkeer & Vetrekk (Repatriation & Departure Service)
DV&O	Dienst Vervoer & Ondersteuning (Transport & Support Service)
ECHR	European Convention on Human Rights
ERRIN	European Return and Reintegration Network
EU	European Union
IND	Immigratie en Naturalisatiedienst (Immigration and Naturalization Service)
IOM	International Organization for Migration
KMar	Koninklijke Marechaussee (military border police)
MoU	Memorandum of Understanding
NPM	Nationaal Preventie Mechanisme (National Preventative Mechanism)
OTS	Ondertoezichtstelling (supervision order)
POL	Proces Opvang Locatie (Process Reception Centre)
RVT	Rust- en voorbereidingstermijn (Rest and Preparation Term)
UASC	Unaccompanied Asylum-Seeking Child
UNCRC	UN Convention on the Rights of the Child
UNHCR	United Nations Refugee Agency
UNICEF	United Nations Children's Fund
VA	Verlengde Asielprocedure (Prolonged Asylum Procedure)



# DEFINITION OF KEY TERMS

## Best interests

**Best Interests principle** – 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 a primary consideration.<sup>1</sup>

**Best Interests Assessment (BIA)** – an ongoing assessment to enable a child's best interests to be taken into account in decision-making by any professional involved with the child.

**Best Interests Determination (BID)** – a multi-agency process undertaken within a child protection framework, which collects in-depth information about the child and takes into account the views of all those working with the child (including immigration officials) as well as the child themselves. It identifies the most suitable, durable solution for that child in a timely manner.

## Definition of a child & categories of migrant/asylum seeking children

**Child** – every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier.<sup>2</sup>

**Accompanied child** – a child who is being cared for either by parents or by someone who, by law or custom, is responsible for doing so.

**Separated child** – a child who has been separated from both parents, or from their previous legal or customary principal care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>3</sup>

**Unaccompanied child** – a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>4</sup>

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<sup>1</sup> UN Convention on the Rights of the Child (UNCRC), 20 November 1989, Article 3, available at: [https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf) [accessed 9 August 2019].

<sup>2</sup> Ibid., Art. 1.

<sup>3</sup> UN Committee on the Rights of the Child (2005), Treatment of unaccompanied and separated children outside their country of origin, General Comment No. 6, available at: <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> [accessed 9 August 2019].

<sup>4</sup> Ibid



## Executive summary

### Scope and purpose of the study

There is a growing focus among organizations working on children's rights, including UNICEF, on the process surrounding the returns of migrant children to their countries of origin. This includes issues such as who returns, how return decisions are taken, the conditions under which children are returned, and how or whether states assess and monitor a child's safety after return. To date, there are no harmonized standards on Best Interests Determination, nor on return procedures specific to children (including unaccompanied children) among European countries, and very limited guarantees on the children's rights situation in countries of origin.

UNICEF's Geneva office, and four European UNICEF National Committees in Germany, the Netherlands, Sweden, and the United Kingdom, have accordingly undertaken a comparative research review on the return of asylum-seeking/migrant children – including both unaccompanied and accompanied children, and voluntary and enforced returns. This study – conducted by UNICEF The Netherlands – explores the Dutch approach, policies, and practices relating to children who do not have a legal right to remain in the Netherlands. The research involved a review of relevant Dutch laws and regulations, and of significant literature and studies on returns, alongside interviews with key informants.

### Key findings

A number of examples of both good practices and challenges faced which emerged from the study in the Netherlands are detailed in the boxes below.

## Good practices

### All migrant/asylum-seeking children:

- There is a dedicated agency within the Ministry of Justice & Security that works on the return of rejected asylum seekers and migrants, children included, called the Repatriation and Departure Service (Dienst Terugkeer & Vertrek, DT&V). The DT&V is responsible for assisting the children in return following a negative decision, until the child is transferred to either the family or to the local authorities.
- DT&V develops a return plan or strategy.

### Unaccompanied children:

- There is a guardianship scheme in place for all unaccompanied asylum-seeking children in the Netherlands.
- Upon submitting an asylum request, an unaccompanied child is immediately informed about the appointment of a legal representative, and the guardians are quickly assigned after arrival in the country.
- The assigned guardians are professionals, and part of an independent family guardian organization named Nidos, which is dedicated to the guardianship and supervision of unaccompanied children.
- During their stay in the Netherlands, unaccompanied children are accommodated in separate facilities dedicated to that purpose.
- During the asylum procedure, children under 12 years of age are interviewed by a special Unit of the Immigration and Naturalization Department (IND), in line with the protocol for interviewing children from 6 to 12 years old.
- When it comes to returns, the guardians give priority to attaining a Double Commitment from the unaccompanied child and the family in the country of origin. The commitment of an unaccompanied child and their (extended) family to return is important in enabling a sustainable return. The more the family is committed to the return of the child, the more the child will be committed to their own return.
- DT&V has a specialized team to work with unaccompanied children on their return.

### Accompanied children:

- A pilot project, in which the Child Care and Protection Board, IND, and DT&V jointly discuss the situations of accompanied children in the return process is being carried out.
- All families receive legal aid during the asylum procedure, and have the right to appeal after a (first) negative decision.



## Challenges

### All migrant/asylum seeking children:

- There is no formal Best Interests Determination (BID) process in the asylum and return procedures, nor are there formal criteria to assess the best interest of the child. The principle of the best interest of the child is not included in the Dutch Aliens Act, and not operationalized in a systematic manner.
- The asylum procedures have shown to be very lengthy and are often subjected to delays. The time allotted for the procedures is often exceeded.
- The Dutch authorities impose migration detention prior to forced return for both accompanied and unaccompanied children. This is a damaging practice and there is no evidence that it influences return numbers.
- The Dutch government is not actively searching for or considering alternatives to migration detention prior to return.
- There is a lack of preparation for return targeted specifically at children, and limited support of children within the return process; there is, for example, an absence of child friendly information on returns.
- No individual return plans are being prepared for children.
- The Dutch authorities practice forced returns of children; this applies to both accompanied and unaccompanied children, under certain conditions.
- There is a lack of post-returns monitoring and follow-up for children and their families, for both voluntary as well as enforced return.
- There is no public data available on the annual number of returns of children and the number of children in detention for immigration purposes.

### Unaccompanied children:

- The Dutch authorities practice forced return for unaccompanied children.
- Guardians and lawyers are not always present during the return meetings with the DT&V.
- Guardians often have unreasonably heavy caseloads.
- The Best Interests Assessments (BIA) and Best Interest Determinations (BID) carried out by the IND are unthorough, are not multi-disciplinary or well-documented, and do not include input or any other involvement from the child, nor from other organizations, the guardian, or the lawyer.
- The staff of the specialized team for unaccompanied children at the DT&V do not receive specific training for communicating and working with children.

### Accompanied children:

- Best Interests Assessments (BIA) and Best Interest Determinations (BID) are not carried out on a systematic basis for accompanied children.
- Child-specific reasons for flight and country reports/information with a focus on children are not consistently considered in family asylum procedures.
- The immigration authorities have no policy to prepare children with families for their return.
- There is also no child-friendly information on country of origin and the return available for children.
- Lawyers are not always involved in the return process. Legal support in the return process is limited.
- No monitoring mechanism is in place to observe the situation of returned children and families.

## Recommendations

On the basis of the findings in this study, UNICEF The Netherlands recommends that the following measures be implemented.

### Best Interests

- Embed the best interests of child principle in the Dutch Aliens Act (**Ministry of Justice & Security**);
- Perform thorough and well-documented Best Interests Assessments (BIA) and put Best Interests Determination (BID) processes in place, in order to make returns child friendly. This should be done in a systematic and objective manner for all children (both accompanied and unaccompanied), and in co-ordination with other government bodies responsible for child protection. This is critical to assuring that all of the necessary information concerning the child's best interests is made available to decision-makers, so that the child's best interests are a primary consideration for determining the asylum or immigration outcome and can inform a durable solution for each child (**Ministry of Justice & Security, Immigration and Naturalization Service and Repatriation and Departure Service**);
- Provide training and develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every asylum request (**Ministry of Justice & Security, Immigration and Naturalization Service**).

### Support for unaccompanied asylum seeking children:

- Strengthen the role of the guardians in the return process of unaccompanied children. A more active role for the guardian can contribute to a sustainable prospect for unaccompanied children whose application for asylum has been rejected, and accordingly may contribute to a sustainable return. (**Ministry of Justice & Security, Repatriation and Departure Service + Nidos**);
- Ensure that the guardians and lawyers are present during the interviews and in the return meetings with DT&V (**Ministry of Justice & Security, Repatriation and Departure Service, Nidos + immigration lawyers**);
- Do not forcefully return unaccompanied children (**Ministry of Justice & Security, Repatriation and Departure Service**).

### Access to legal aid

- Provide specialized training for immigration lawyers and other legal advocates on children's rights and child-appropriate practices (**Immigration lawyers**);
- Make sure that legal support is available during the return process and that immigration lawyers are involved in the return process. Lawyers might be more inclined to do so if compensation for this part of the asylum process were made available (**Ministry of Justice & Security, Repatriation and Departure Service + immigration lawyers**).

### Detention

- Put an end to the use of immigration detention of both accompanied and unaccompanied children (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Actively search for and implement alternatives to migration detention for all children (**Ministry of Justice & Security, Repatriation and Departure Service**).

### **Asylum and return procedure**

- Provide training to employees of the Repatriation and Departure Service and to immigration lawyers on supporting children. This training should include child-specific communication techniques **(Ministry of Justice & Security, Repatriation and Departure Service)**;
- Intensify efforts to reduce the backlogs in the asylum application and return process and prevent further delays, including strengthening the capacity of the immigration and naturalization services. The authorities should make sure to adhere to the time allotted for the procedures. Children, whether unaccompanied or within families, need as soon as possible to have clarity about the potential of staying or the obligation to return. The current lengthy procedures are extremely harmful to children **(Ministry of Justice & Security, Immigration and Naturalization Service)**;
- Consistently consider child-specific reasons for flight in family asylum procedures (Ministry of Justice & Security, Immigration and Naturalization Service);
- Develop and use child-specific country reports/information in all asylum procedures (including return) for both accompanied and unaccompanied children **(Ministry of Justice & Security, Immigration and Naturalization Service)**;
- Conduct age assessments for children who are clearly younger than 18 years of age but are registered as adults in another European member state **(Ministry of Justice & Security, Immigration and Naturalization Service)**;
- Make sure that immigration lawyers and/or guardians are present at return meetings with the Repatriation and Departure Service (DT&V) and IOM. Compensating lawyers for this part of the asylum process should be considered **(Ministry of Justice & Security, Repatriation and Departure Service, IOM + immigration lawyers)**.

### **Returns support and reintegration**

- Prepare children for their return as thoroughly as possible, by involving them in the return preparation and by making sure that they receive, in a child-friendly way, all relevant information about the return process, the decision, and reintegration in the country of return. This includes child-friendly and child-specific counselling sessions **(Ministry of Justice & Security, Repatriation and Departure Service)**;
- Make sure involved organisations coordinate their work for families and children in return procedures **(Ministry of Justice & Security, Repatriation and Departure Service, NGOs, Child Care and Protection Board)**;
- Perform thorough family assessments before returning an unaccompanied child to the family, based on the rights of the child **(Ministry of Justice & Security, IOM and Repatriation and Departure Service)**;
- Make sure that procedures for family tracing and contact are based on the rights of the child, meaning that family tracing can only be performed if it is in the best interests of the child, if the child has given permission, and if it is conducted in a safe manner **(Ministry of Justice & Security, Repatriation and Departure Service)**;
- Continuously assess the security situation of a country as part of the return procedure **(Ministry of Justice & Security, Repatriation and Departure Service)**;
- Make sure that immigration lawyers are able to support children and families in return procedures **(Ministry of Justice & Security, Repatriation and Departure Service)**;
- Establish an independent and thorough monitoring system **(Ministry of Justice & Security, Immigration and Naturalization Service)**;
- Always develop individual return plans, including practical arrangements on education, medical care, housing, and work. Standardized individual return plans do not suffice **(Ministry of Justice & Security, Repatriation and Departure Service)**.



**Data**

- Collect and publish annual data on the number of returns (both forced and voluntary) of accompanied and unaccompanied children, and the number of children in detention for immigration purposes (**Ministry of Justice & Security, Immigration and Naturalization Service and Repatriation and Departure Service**).

# PART I: INTRODUCTION & BACKGROUND



## 1 Background and methodological approach

### 1.1 Background

UNICEF's Geneva office, and four European UNICEF National Committees in Germany, the Netherlands, Sweden and the United Kingdom, have undertaken a research review on the return of asylum-seeking/migrant children. With this study, UNICEF aims to assess:

- how return decisions are taken, and to what extent child-specific protection and assistance is made available to children in return determination processes and return conditions;
- how different States consider and determine each child's best interests when making decisions about returns and when returning a child/family;
- how/whether different States assess and monitor each child's safety after return.

### 1.2 Scope

This study, commissioned by UNICEF The Netherlands (NL) and conducted by both Defence for Children and UNICEF NL, explores the Dutch approach, policies, and practices relating to children who do not have a legal right to remain in the Netherlands. It covers the situation of both unaccompanied and accompanied children. It explores issues related to both voluntary returns and enforced returns.

### 1.3 Methodological approach

#### 1.3.1 Stages of the research

The first stage of the research involved a review by DLA Piper, a global law firm, of the relevant laws and regulations on the asylum procedure and return process and the position of children.



The second stage involved further desk research and interviews with key non-governmental informants carried out by Defence for Children The Netherlands (DCI), and commissioned by UNICEF NL. Defence for Children collected quantitative and qualitative data and performed an analysis on the return of children to countries of origin or third countries from the Netherlands. The interviews took place during February and March 2019.

For the third stage, UNICEF NL conducted interviews with the Dutch authorities involved in the asylum and return procedure. These interviews were held on 13 and 14 February 2019.

### 1.3.2 Relevant actors

Relevant actors with responsibilities connected to returns as well as other migration-related issues include:

#### **Ministry of Justice and Security and implementing authorities:**

- **Ministry of Justice and Security, Migration Directorate (In Dutch: Ministerie van Justitie en Veiligheid, Directoraat Migratie)**  
The Ministry of Justice and Security develops the migration policy, including specific policy on return.
- **Immigration and Naturalization Service (in Dutch: Immigratie en Naturalisatiedienst, IND)**  
The IND operationalizes the asylum procedure; it assesses the asylum claim and makes the return decision.
- **Repatriation and Departure Service (in Dutch: Dienst Terugkeer en Vertrek, DT&V)**  
The DT&V takes all steps necessary to implement the return decision. The DT&V is responsible before and during the transfer of the child, following a negative decision, until the child is transferred to either the family or to the local authorities.
- **Child Care and Protection Board (in Dutch: Raad voor de Kinderbescherming)**  
The Child Care and Protection Board is a division of the Ministry of Justice and Security. The Board is consulted or called in when there are grave concerns at the living situation and upbringing of a child from the ages of 0 to 18. The Board protects the child's interests by assessing their family situation and advising the best possible solution.
- **Transport and Support Service (in Dutch: Dienst Vervoer en Ondersteuning, DV&O)**  
The Transport and Support Service is part of the Dutch Custodial Institutions Agency and arranges for the transport of detainees and, relevant for the underlying research, foreign nationals to, for instance, detention centres before forced return to the country of origin or a third country.
- **Central Agency for the Reception of Asylum Seekers (in Dutch: Centraal Orgaan opvang Asielzoekers, COA)**  
Upon their arrival in the Netherlands, asylum seekers are entitled to reception from the moment they apply for asylum until they have been issued a residence permit or leave the country. The COA accommodates asylum seekers who have applied for asylum and are engaged in asylum procedures in reception centres, and offers them basic services. In close co-operation with chain partners, the COA prepares asylum seekers for integration and (work) participation in the Netherlands, or contributes to repatriation.

### Children's social care organizations:

- ***Nidos***

Nidos fulfils the guardianship task for unaccompanied and separated children, as well as for migrant and refugee families who are placed under supervision by a juvenile judge. Within the framework of the guardianship, juvenile protectors working for Nidos are responsible for the support of unaccompanied minor asylum seekers and refugees. The support is aimed at creating conditions for the reception, education, and development of the youngster and their functioning in the Netherlands or the country of origin/return. Aside from their care for unaccompanied minors, Nidos is also responsible for the supervision of minors for whom an application has been submitted for a (temporary) asylum residence permit, and who are therefore staying in a COA reception location with their families but are placed under supervision (in Dutch: 'ondertoezichtstelling' (OTS) by the juvenile court. One reason for such a supervision order can be that there are problems within the family regarding the education of the child.<sup>5</sup>

- ***Immigration lawyers***

Immigration lawyers provide legal support for asylum seekers during the asylum procedure.

- ***Dutch Refugee Council (in Dutch: Vluchtelingenwerk Nederland)***

The Dutch Refugee Council commits itself to the protection of asylum seekers and refugees by providing personal support, and it represents their interests at their admission, reception and social participation in society.

- ***STIL Utrecht***

STIL Utrecht helps undocumented individuals in the Netherlands by arranging shelter and providing legal as well as medical assistance.

- ***Solid Road***

Solid Road assists (former) asylum seekers and people without residence permits in case of voluntary return to their country of origin. One of their projects specifically focuses on returns to Armenia.

- ***Amnesty International The Netherlands***

Amnesty International campaigns in order to put pressure on governments to honour their responsibility to protect the rights of individuals. Amnesty International endeavours to deal with individual cases as little as possible, and only plays a behind-the-scenes role when there are concerns regarding refoulement after the forced return of an individual. In such cases, Amnesty International The Netherlands, often in co-operation with the Dutch Council for Refugees and Defence for Children The Netherlands, collects information and drafts a letter to the authorities. Such concerns at present primarily arise from forced returns to

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<sup>5</sup> In accordance with Article 1:254 of the Civil Code of the Netherlands, a minor can be placed under supervision by the juvenile court "if he is growing up in such a way that his moral or spiritual interests or his health are at serious risk, and other means to avert this risk have failed or are expected to fail." An unofficial English translation of the Dutch Civil Code, provided by Dutch Civil Law, is available online at: <http://www.dutchcivillaw.com/civilcodegeneral.htm> [accessed 15 August 2019]. For an English translation of the Dutch Civil Code in book form, see Hans C. S. Warendorf, Richard Thomas, and Ian Curry-Sumner, *The Civil Code of the Netherlands*, Second Edition (The Hague: Wolters Kluwer, 2013). The original Civil Code (Burgerlijk Wetboek) in Dutch is available online at: <http://www.wetboek-online.nl/site/home.html> [accessed 15 August 2019].

Afghanistan, Sudan and Bahrain. Amnesty International studies the human rights violations of refugees and migrants in co-operation with researchers in the field worldwide, lobbies Dutch authorities, and campaigns and creates awareness.

### 1.3.3 Interviews

For this research, Defence for Children and UNICEF The Netherlands conducted fifteen interviews with a range of concerned persons, comprising:<sup>6</sup>

#### **Government/Ministries:**

- Two legal advisors from the Child Care and Protection Board<sup>7</sup>
- Three officials from the Ministry of Justice and Security, Migration Directorate<sup>8</sup>
- Two officials from the Immigration and Naturalization Service (IND)<sup>9</sup>
- Two officials from the Repatriation and Departure Service (DT&V)<sup>10</sup>
- One location manager from the Central Agency for the Reception of Asylum Seekers (COA), of a location for unaccompanied minors<sup>11</sup>
- Three employees of the Transport and Support Service (DV&O)<sup>12</sup>

#### **Civil society and lawyers:**

- Three immigration lawyers working in three different parts of the Netherlands (i.e. Amsterdam, and in the south and east of the Netherlands)<sup>13</sup>
- Two guardians from Nidos<sup>14</sup>
- One team leader of the Dutch Council for Refugees<sup>15</sup>
- One social-legal advisor from STIL Utrecht<sup>16</sup>
- Two policy officers of Human Rights & Migration at Amnesty International The Netherlands<sup>17</sup>
- One project co-ordinator from Solid Road<sup>18</sup>

#### **International organizations:**

- Two policy officers from the International Organization for Migration (IOM) The Netherlands<sup>19</sup>

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<sup>6</sup> The names of the interviewees are known by Defence for Children and UNICEF The Netherlands.

<sup>7</sup> Interview conducted 5 February 2019.

<sup>8</sup> Interview conducted 14 February 2019.

<sup>9</sup> Interview conducted 14 February 2019.

<sup>10</sup> Interview conducted 13 February 2019.

<sup>11</sup> Interview conducted 25 February 2019.

<sup>12</sup> Interview conducted 13 February 2019.

<sup>13</sup> Interviews conducted 15 February, 26 February and 4 March 2019.

<sup>14</sup> Interview conducted 5 February 2019.

<sup>15</sup> Interview conducted 6 February 2019.

<sup>16</sup> Interview conducted 27 February 2019.

<sup>17</sup> Interview conducted 4 March 2019.

<sup>18</sup> Interview conducted 13 February 2019.

<sup>19</sup> Interview conducted 14 February 2019.

## PART II: **FINDINGS**



## 2 Asylum system and procedures

An asylum seeker arriving in the Netherlands must report for registration at the Central Reception Centre (*Centrale Ontvangstlocatie, COL*) in Ter Apel, Groningen. After registration, the asylum application is formally filed. Once an asylum request has been formally submitted, an asylum seeker is entitled to a rest and preparation term (*rust en voorbereidingstermijn, RVT*) of at least six days. In the case of unaccompanied children, this period is at least three weeks.<sup>20</sup> There is no maximum duration to the RVT. During the RVT, the asylum seeker is typically busy with appointments in preparation for the actual asylum procedure. An unaccompanied child is appointed a lawyer, who may invite him or her for a preparatory conversation as of the day on which the case was attributed to this lawyer. During the RVT, the unaccompanied child is informed about and prepared for the asylum procedure. Similarly, families can be invited during the RVT for preparatory conversations as soon as the case has been assigned to a lawyer.

Since March 2016, the Dutch Immigration and Naturalization Service (*Immigratie- en Naturalisatiedienst, IND*) has applied the so-called 'tracks policy', consisting of five different methods of proceeding. Tracks one and two deal respectively with Dublin Regulation cases and cases of asylum seekers from (according to Dutch authorities) safe third countries, or with legal residence in another EU country. Track three is designed for asylum seekers evidently qualifying for an asylum permit, among whom, at present, are Syrians and Eritreans. Track five concerns cases of asylum seekers who may well also qualify for an asylum permit, but where some investigation into their identity and nationality is necessary. In track four, the Immigration

<sup>20</sup> Kamerstukken [Parliamentary papers] II 2009/10, 27 062, no. 65 (22 June 2010), p. 2. Available (in Dutch) at: <https://zoek.officiele-bekendmakingen.nl/kst-27062-65.html> [accessed 15 August 2019].



and Naturalization Service deals with asylum applications under the eight-day General Asylum Procedure (*Algemene Asielprocedure, AA*).

### General Asylum Procedure (AA)

The AA is scheduled as follows:

- Day 1: First interview conducted by the Immigration and Naturalization Service, concerning the asylum seeker's identity, nationality, family, and travel itinerary.
- Day 2: Scrutiny of the report of the first interview in co-operation with the relevant lawyer, and filing of corrections and additions (*correcties en aanvullingen*); preparation for the second interview.
- Day 3: Second interview conducted by the Immigration and Naturalization Service regards the grounds for seeking asylum. The report of this interview needs to be finished by the end of the day on which the interview takes place.
- Day 4: Scrutiny of the second interview in co-operation with the lawyer, and filing of corrections and additions.
- Day 5: Preliminary decision (*voornemen*) by the Immigration and Naturalization Service in cases of an intention to decline the asylum application, or, alternatively, the decision to grant asylum.
- Day 6: Written reaction of the lawyer to the preliminary decision (*zienswijze*).
- Days 7 and 8: The Immigration and Naturalization Service renders its decision. This asylum request may be rejected or granted. A third outcome is that the case is referred to the Prolonged Asylum Procedure (*Verlengde Asielprocedure, VA*) because more research is necessary, for instance by way of an additional interview.

The AA is an extremely hurried procedure which puts great pressure on asylum seekers, as they must go through two interviews with the Immigration and Naturalization Service and several appointments with their lawyers within just a few days. This especially holds for children, both unaccompanied children and children of 15 years and older in families. The UN Committee on the Rights of the Child has criticized the eight-day asylum procedure in the Netherlands in its latest Concluding Observations on The Netherlands, and has recommended a review of this procedure, as it places constraints on procedural safeguards.<sup>21</sup> In their recent report on unaccompanied children in The Netherlands, the UN Refugee Agency (UNHCR) observed that the Unaccompanied Asylum-Seeking Child (UASC) needs more time to recover after arriving in the Netherlands. The UASC often feels overwhelmed and confused during the asylum procedure, which begins soon after their arrival in the Netherlands.<sup>22</sup>

### Prolonged Asylum Procedure (VA)

In the VA, the Immigration and Naturalization Service has six months to make an asylum decision, starting from the date on which the asylum request was submitted. This term may

<sup>21</sup> UN Committee on the Rights of the Child (CRC), Concluding observations on the fourth periodic report of the Netherlands, 8 June 2015, CRC/C/NDL/CO/4, paras 52(a) and 53(a), available at: <https://www.refworld.org/docid/566fc5a04.html> [accessed 9 August 2019],

<sup>22</sup> UNHCR, *In de Eerste Plaats een Kind. Bevindingen, aanbevelingen en oplossingen in het belang van alleenstaande minderjarige vreemdelingen in Nederland* ['In the First Place a Child. Findings, recommendations and solutions in the interests of unaccompanied, underaged aliens in the Netherlands'], April 2019, available (in Dutch) at <https://www.unhcr.org/nl/wp-content/uploads/UN-HCR-Children-First-2019-screen-1.pdf> [accessed 9 August 2019].

in certain circumstances be prolonged for a further nine months, and – in some cases – for an additional three months beyond this, for a total maximum prolongation of 12 months.<sup>23</sup> In the VA, the asylum seeker has four or six weeks to react to a preliminary decision rejecting the asylum request.

In cases of rejection in the AA procedure, an asylum seeker has one week to file an appeal at the court.<sup>24</sup> In cases of rejection based on the findings of the VA, the asylum seeker has four weeks to file an appeal with the court. If an appeal has a suspensive effect, the asylum seeker may await the decision of the court and will not be expelled during the appeal procedure. If the appeal lacks a suspensive effect, the asylum seeker needs to ask the court for a preliminary measure in order to prevent forced return during the appeal procedure.

### Fast track (track one and two)

The so-called fast track<sup>25</sup> in the Dutch asylum procedure applies when:

- Another EU Member State is responsible for examining the application for asylum;
- The asylum seeker has already been granted protection in another Member State;
- The asylum seeker comes from a 'safe country'.<sup>26</sup>

In these cases, the asylum seeker will not receive a rest and preparation period, and they have only one conversation with the IND. In this conversation, the asylum seeker can explain why they cannot go to another Member State, or why their country is not safe. The IND makes a swift decision in such cases: the entire asylum procedure is completed within 7 days after entry, for the whole period of which the applicant stays in the COL. Asylum seekers whose request has been rejected (in track 2 cases) must leave the Netherlands immediately. They will no longer receive assistance and financial support for return to the country of origin. This also applies to asylum seekers who withdraw their application. A rejected asylum seeker from a safe country of origin will receive a 2-year ban from travelling to the Schengen Area (currently consisting of 26 European countries).<sup>27</sup> Generally, migrants can seek help from the IOM for their return to their country of origin. However, asylum seekers from some countries (such as Croatia, Syria, Yemen and Libya) do not receive assistance from the IOM. This also means that they do not receive financial assistance with, for example, arranging replacement travel documents or airline tickets. They can still however rely on assistance from the return and departure service (DT&V).

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<sup>23</sup> Netherlands Aliens Act 2000, Article 42, paras. 4 and 5,. Available in Dutch at: <https://wetten.overheid.nl/BWBR0011823/2019-02-27> [accessed 9 August 2019]. This Act is henceforward cited as Aliens Act.

<sup>24</sup> Aliens Act 2000, Art. 69, para. 2 a.

<sup>25</sup> For an overview of the procedure for asylum application in the Netherlands, including the fast-track process, see: <https://www.government.nl/topics/asylum-policy/question-and-answer/applying-for-asylum-procedure>. For the original Dutch-language version, see: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/procedure-asielzoeker> [accessed 9 August 2019].

<sup>26</sup> These include countries in which, according to the Dutch government, the following are not practised: persecution on the grounds of, for example, race or belief; torture; inhumane treatment. The list of 'safe countries' is constantly being updated; the most recent version at the time of writing can be found at: <https://www.government.nl/topics/asylum-policy/question-and-answer/list-safe-countries-of-origin>. For a Dutch-language version of the list, see: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/lijst-van-veilige-landen-van-herkomst> [accessed 9 August 2019].

<sup>27</sup> For an overview of the processing of asylum applications from people in safe countries are dealt with, see 'How are asylum applications by people from safe countries dealt with?', available at: <https://www.government.nl/topics/asylum-policy/question-and-answer/how-are-asylum-applications-by-people-from-safe-countries-dealt-with>. For the Dutch-language original of this document, see: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/wat-gebeurt-er-met-asielaanvragen-van-mensen-uit-veilige-landen> [accessed 9 August 2019].

## Delays

Despite the fast-track practice, over recent years asylum procedures in the Netherlands have shown to be very lengthy and often subject to delays. There are many backlogs, and the time set for the procedures is often exceeded. The delays and backlogs have been criticized by various national and international organizations, including the UN Human Rights Committee. In its recent Concluding Observations on the fifth periodic report of the Netherlands, the Committee recommended, *inter alia*, that the Netherlands "[i]ntensify its efforts to reduce the backlogs in the asylum application process and the family reunification process, including by strengthening the capacity of the immigration and naturalization services in all constituent countries".<sup>28</sup>

## 2.1 Asylum procedures for unaccompanied children

Upon submitting an asylum request, an unaccompanied child is immediately informed of the appointment of a legal representative.<sup>29</sup> A guardian is appointed in accordance with article 1:295 and article 1:302, para. 2 of the Dutch Civil Code (*Burgerlijk Wetboek*). In the Netherlands, the guardianship of unaccompanied children is carried out by Nidos. The guardian supports unaccompanied children during the asylum procedure, and decides with the Central Agency for the Reception of Asylum Seekers where the child is to stay. In addition, the unaccompanied child is offered a medical investigation, on a voluntary basis. The aim of this investigation is to determine whether or not the child can be interviewed about their asylum claim, and if the child needs any further medical support.

Every asylum seeker who has entered the Netherlands by land, who claims to be a child, and is unable to prove their age with documents or in another way, may in cases of doubt be subjected to an age assessment by the Immigration and Naturalization Service, the Royal Military Police (KMar), or the Aliens Police Department, Identification and People Trafficking (AVIM).<sup>30</sup> Such inspections require the permission of the asylum seeking child. If doubt persists about the age of the asylum seeker following the assessment, they are considered to be a child.

When an unaccompanied child is considered a minor, they will be placed in a dedicated Process Reception Centre (*Procesopvanglocatie, POL*) for unaccompanied children. Unaccompanied children younger than 15 years of age are placed in a foster family. In cases where the age assessment indicates that an asylum seeker is an adult, this person will be placed in a regular reception centre.

Unaccompanied children are interviewed by the immigration authorities in Den Bosch. Unaccompanied children under 12 years of age are interviewed by a special Unit of the Immigration and Naturalization Service at that location in line with the protocol for the interviewing of children from 6 to 12 years of age. The staff members of this Unit are trained to interview children.

<sup>28</sup> UN Human Rights Committee, Concluding observations on the fifth periodic report of the Netherlands, CCPR/C/NLD/CO/5 (25 July 2019), available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NLD/INT\\_CCPR\\_COC\\_NLD\\_35596\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NLD/INT_CCPR_COC_NLD_35596_E.pdf) (text quoted is at p. 5 of this report) [accessed 9 August 2019].

<sup>29</sup> Netherlands Aliens Decree 2000, Art. 3.109d, para. 1. Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0011825/2013-01-01> [accessed 15 August 2019]. Henceforward, this statute is cited as Aliens Decree.

<sup>30</sup> Aliens Decree, Article 3.109d, para. 2; and Netherlands Aliens Circular 2000 (C) para. C1/2.2. Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0012288/2019-08-01> [accessed 15 August 2019].

## 2.2 Asylum procedures for accompanied children

According to the EU Directive on common procedures for granting and withdrawing international protection, every child has the right to apply for international protection. This could be “either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.”<sup>31</sup> Member States may determine in national legislation the cases in which a child can make an application on their own behalf.<sup>32</sup>

In the Netherlands, parents (or other family members) file an asylum application on behalf of their children, if those children are younger than 15 years of age. It is established policy that children of 15 years or older file their own asylum application. These children are interviewed by the Immigration and Naturalization Service, during which they are asked to give their own reasons for applying for asylum. If younger children do have an own asylum claim, they can also be interviewed. Children as young as 12 may also file their own asylum application. Previously, this option had been infrequently pursued.<sup>33</sup> Recently, however, it has become somewhat more common for lawyers to have their young clients be heard explaining their individual reasons for seeking asylum during the two interviews with the IND. Occasionally, this may even occur in cases of children younger than 12 years of age.<sup>34</sup>

In 2017, a lawyer supported an Afghan family with their request for asylum. The parents claimed to have converted to Christianity. Their statements, however, were deemed incredible by the Immigration and Naturalization Service. The daughter of the family, a ten-year-old yet – according to her lawyer – rather precocious girl, who was well capable of expressing herself, also claimed to be a Christian. She regularly visited a church in the Netherlands and took part in church activities and bible teaching. The lawyer insisted to the Immigration and Naturalization Service that the daughter should also be heard concerning her own religious beliefs and her fears should she return to Afghanistan. In the end, the Immigration and Naturalization Service agreed to interview the girl.

<sup>31</sup> EU Directive on common procedures for granting and withdrawing international protection (recast) (2013/32/EU) (26 June 2013), Article 7, para. 3. Available at: <https://eur-lex.europa.eu/eli/dir/2013/32/oj> [accessed 15 August 2019].

<sup>32</sup> Ibid., Art. 7, para. 5.

<sup>33</sup> Kamerstukken II 2003/04, 19 637, no. 824 (25 June 2004), p. 14. Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-824.html> [accessed 15 August 2019].

<sup>34</sup> In a decision, the UN Committee on the Rights of the Child, referring to General Comment 12, concluded in a *kafalah* (fostering) case against Belgium that even a five-year-old should be allowed the opportunity to give their own views on the question of whether or not they should be granted a residence permit: “8.7 The Committee points out, however, that “article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice that would restrict the child’s right to be heard in all matters affecting her or him. [...] It is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter [...].” It also notes that “any decision that does not take into account the child’s views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests. [...] The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child’s views in determining his or her best interests.” See Y.B. and N.S. v. Belgium, no. 12/2017, UN Committee on the Rights of the Child (CRC), 27 September 2018, available at: <https://www.refworld.org/cases,CRC,5c5ab7494.html> [accessed 9 August 2019].

The asylum application was subsequently rejected after the Immigration and Naturalization Service deemed that the conversion was not genuine. The lawyer arranged for a Dutch foundation with expertise in the field of conversion to interview the girl and write a report, with a particular consideration of the possibility for a child of this young age to hold her own religious conviction, independent of her parents. Whereas the report concluded that she indeed has an independent religious conviction, and in that respect made her own choices, the Immigration and Naturalization Service was unconvinced, and declined the asylum request. The Immigration and Naturalization Service stated that the claimed conversion of a ten-year-old is questionable, as children of that age have not yet developed an independent, adult personality, and generally do not choose a faith, but are guided in this respect by their parents.

The State Secretary of Justice and Security assumed that the girl's parents would renew their Islamic faith if they were to be expelled to Afghanistan. He expected their daughter to follow them in that regard. The State Secretary of Justice and Security attached weight to the fact that the conversion of the girl's parents was considered incredible in a previous asylum procedure. The court, however, referred to a statement by the Baptist church and a report from Stichting Gave (a foundation specializing in conversion cases and assessments of the sincerity of conversions) based on an interview with the ten-year-old girl by means of a questionnaire on conversion specifically designed for children. The court concluded that the girl did not present herself as being dependent from her parents, and that she makes her own choices and takes her own initiative when it comes to her religion and the way she practices this. The court clearly believed that not too much weight should be given to the fact that the conversion of the parents was deemed incredible. The court quashed the decision, and ruled that the Immigration and Naturalization Service were to make a redecision on the asylum request of the daughter.

The second interview of children takes place concurrently with the interviews of the parents. These interviews are not always conducted in child-friendly rooms or by specially trained staff members. During the interviews, the child is asked not only about their own reasons to flee the country of origin, but also the reasons of the parent(s). The answers provided can then be used to verify the statements of the parents. This practice is criticized by the UN Committee on the Rights of the Child in their latest Concluding Observations on the Netherlands.<sup>35</sup>

## 2.3 Asylum residence permit

An asylum residence permit can be granted on two different grounds:

- **refugee status** indicating qualification as a refugee under Article 1A of the 1951 Geneva Convention<sup>36</sup>;
- **subsidiary protection** under Article 3 of the ECHR and Article 15(c) of the Qualification Directive.

<sup>35</sup> UNCRC, Concluding observations on the fourth periodic report of the Netherlands, paras. 52(b) and (c), and 53(b) and (c).

<sup>36</sup> A-ground; recognition and admission as a refugee within the meaning of the Refugee Convention.



In cases of a rejection of a first asylum request, the Immigration and Naturalization Service also performs an *ex officio* assessment of several potential humanitarian justifications for asylum. These are considered in relation to Article 8 of the ECHR (a right to respect for one's private and family life), chapter B8 of the Dutch Aliens Circulaire (among others the policy for victims and witnesses declarant of human trafficking, a suspension of return on medical grounds accordant to Article 64 of the Aliens Act).<sup>37</sup>

## 2.4 Return decisions for rejected asylum-seekers

A decision to decline an asylum application also includes a return decision (*terugkeerbesluit*), declaring the stay of a third-country national to be illegal and imposing on them an obligation to leave the country.<sup>38</sup> A return decision can also be included in decisions on a further application for a residence permit or in court rulings.

According to the Return Directive, a return decision must have been taken before a rejected asylum seeker can be expelled. One of the legal consequences of a return decision is the imposition of a term for voluntary departure on the third-country national. In principle, this term is 28 days, starting from the date on which the decision is taken.<sup>39</sup> The State Secretary of Justice and Security (*de staatssecretaris van Justitie en Veiligheid*) can decide to shorten this period or indicate that the third-country national must leave the Netherlands immediately.<sup>40</sup> This is, for instance, the case when a return decision has already been issued as part of a previous procedure; when a third-country national is believed to pose a threat to national security or has introduced fraudulent information as regards identity; or when it is determined that there is a risk of the third-country national absconding.

### 2.4.1 Imposition of an entry ban

A possible legal consequence of a decision to decline an asylum request is the imposition of an entry ban.

In some cases, the State Secretary of Justice and Security themselves is obliged to impose an entry ban. This is the case when the third-country national is offered no term for voluntary departure or when they have not left the Netherlands within the term offered to them for so doing.<sup>41</sup>

However, an entry ban cannot be imposed before a return decision is taken. An entry ban applies to the territory of all Member States of the European Union. According to Dutch policy, an entry ban in principle has a duration of two years. This period can both be shortened or prolonged in individual cases.<sup>42</sup>

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<sup>37</sup> Until its abolishment in May 2019, also the discretionary power of the State Secretary of Justice and Security was taken into account.

<sup>38</sup> Aliens Act, Art 45.

<sup>39</sup> Aliens Act, Art 62.

<sup>40</sup> Aliens Act, Art 62, para. 2; Aliens Decree, Articles 5.1b, paras. 3 and 4, and Art. 6.1. See also European Union Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (24 December 2008), Art. 7, para. 4. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> [accessed 15 August 2019].

<sup>41</sup> Aliens Act, Art. 45, para. 8, and Art. 66a.

<sup>42</sup> Aliens Decree, Art. 6.5a.

No entry bans are imposed on children; this applies to both unaccompanied children and those accompanied by their parents or other family members.<sup>43</sup> However, entry bans can be imposed on the parents or other (adult) family members of these children.

#### 2.4.2 Informing asylum seekers of the negative decision

The organizations and lawyers who were interviewed for this report noted some challenges regarding the return decisions procedure.

Interviewees observed that it can be difficult to explain a negative decision to a child. The interviewees predominantly mentioned procedural challenges of a practical nature, which can cause problems regarding the lawyer's duty to inform their client. In this respect, a lawyer explained that she is often the one to inform clients of a preliminary decision to reject an asylum claim (*voornemen*).

Another lawyer explained that how an asylum seeker is informed of the decision (*beschikking*) is dependent on the type of case, and said that if a case falls under the General Asylum Procedure, it is the Immigration and Naturalization Service who informs both the lawyer and the client. Often, a notification is sent one day in advance, by fax. The lawyer stated that, in cases of an unaccompanied child, he always sends it on to Nidos with the announcement of a negative decision on the next day. In this lawyer's experience, the first one to inform the minor is typically either the Immigration and Naturalization Service or Nidos.

An interviewee from Nidos confirmed that, when it concerns unaccompanied children, it is not uncommon for guardians to inform the child. This interviewee remarked that in practice, the guardian often passes the decision on to the child before an appointment is made with the lawyer for further explanation. The interviewee from Nidos explained that they usually receive all the relevant documentation and the lawyer asks the guardian to inform the child.

Sometimes, problems arise from the way in which the process of informing asylum seekers of decisions currently works. One lawyer provided an example of a negative decision which had been sent to her by regular mail, resulting in her client receiving the news from the COA before she had the opportunity to inform them herself:

*"I received mail with a negative decision notifying a 24-hour term [to leave the country]. [...] [I]t means that my clients have already been summoned by COA without me being informed of the decision. I think this is very crude, because they hear from COA that they have been rejected. The minors will think, 'Why has my lawyer not discussed this with me?' It is good that the DT&V does not yet initiate conversations on return, but COA will also just kick them out of the Family Location and that is truly unpleasant. It has happened to me often. The IND is very messy with these kinds of things. You then call them and they say, 'Oh well, yeah, that is inconvenient.' You do not get much more than a 'sorry'."*

– Immigration lawyer

<sup>43</sup> Aliens Decree, Art. 6.5, para. 2(f),

### 2.4.3 Appeal against the negative decision

It is not possible to make individual appeals against the different legal consequences of a rejected asylum application. However, when forced return is imminent, it is possible to appeal against the forced return itself and/or the way in which this forced return is to be carried out (on the grounds of Article 72, para. 3 of the Aliens Act). The notice (a letter to the third-country national indicating that they must leave the Netherlands) is also a decision made under the terms of the General Administrative Law (*Algemene Wet Bestuursrecht, AWB*). It is accordingly possible to file an appeal against this decision.<sup>44</sup>

It is the lawyer's role to file an appeal against the negative decision. One immigration lawyer interviewed for this study made clear that she nearly always appeals:

*"In cases of a first rejection, I nearly always file an appeal at the Court, within a day or within four weeks. I think that when children and families are concerned, I file an appeal in 99% of the cases. Dublin cases are the small exception. I take a different stance in Dublin Germany cases for instance. We discuss how the appeals procedure looks, what I am going to argue and what they can expect in the meantime. DT&V is holding back more now and does not start conversations on returns during the appeals phase, fortunately."*<sup>45</sup>

– Immigration lawyer

Another immigration lawyer sighs when explaining the procedures of appeal and higher appeal: "At the Council of State I do not feel as if I am taken seriously, if I am being invited for once." He explains that he sometimes writes an appeal of 15 pages, in which he invests great effort, only to find it rejected without any explanation of the reasons why (*ongemotiveerde afdoening in hoger beroep*). "That is a blow to the face as a professional", he says.

A negative decision by the Immigration and Naturalization Service can have a great impact on children, not least because of the limited chances of success in appeal procedures. An interviewee from Nidos emphasized that this situation can lead to repeated asylum requests:

*"You can see the panic strike in that situation. Then you also see repeated asylum requests. The strange thing is that quite a number of repeated asylum requests of Afghans are granted, on the basis of conversion, sexual orientation among the men or on westernization among the girls."*

– Interviewee Nidos

<sup>44</sup> See General Administrative Law Act the Netherlands, Article 1:3, available at: [https://www.acm.nl/sites/default/files/old\\_publication/publicaties/15446\\_dutch-general-administrative-law-act.pdf](https://www.acm.nl/sites/default/files/old_publication/publicaties/15446_dutch-general-administrative-law-act.pdf) [accessed 10 August 2019].

<sup>45</sup> Influenced by the Court of Justice of the European Union (CJEU) judgement ECLI:EU:C:2018:465 of *Gnandi v. Belgium*, Case C-181/16, 19 June 2018; the judgement and related documents are available at: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-181/16> [accessed 10 August 2019].



## 2.5 The no-fault policy

In principle, applicants who through no fault of their own are unable to leave the Netherlands are entitled to a specific permit, based on the 'no-fault' (*buiten schuld*) policy. Unaccompanied children who were 15 years or younger at the time of their arrival and whose application had been rejected, and who have no relatives or adequate reception facilities available in the country of origin are, up to three years after their initial application, also eligible for the 'no-fault' policy. However, it generally proves very difficult to meet the conditions required for such permits to be granted.<sup>46</sup> In 2017, Nidos stated that the Immigration and Naturalization Service had yet to grant a no-fault permit to any unaccompanied child aged 15 years or younger at arrival.<sup>47</sup>

## 2.6 The discretionary power of the State Secretary of Justice and Security

As of 1 May 2019, the discretionary power of the State Secretary of Justice and Security, which they held for any stage or procedure of a third-country national, was abolished and

<sup>46</sup> Adviescommissie voor Vreemdelingenzaken (Commission for Advice on Alien Affairs, ACVZ), 'Waar een wil is maar geen weg: Advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken' ['Where there is a will, but not a way: Advice concerning the application of the policy for Aliens who want to leave the Netherlands, but are unable to'] (Den Haag: ACVZ, July 2013). Available (in Dutch) at: [https://acvz.org/wp-content/uploads/2015/05/01-07-2013\\_Advies38-ACVZweb1.pdf](https://acvz.org/wp-content/uploads/2015/05/01-07-2013_Advies38-ACVZweb1.pdf) [accessed 15 August 2019].

<sup>47</sup> Stichting Nidos, Jaarverslag [Annual Report] 2017 (Utrecht: Nidos, 2018). Available (in Dutch) at: <https://www.nidos.nl/uitgelicht/jaarverslag-2017/> [accessed 15 August 2019].



transferred to the director of the Immigration and Naturalization Service.<sup>48</sup> Currently, it is only possible to grant residence permits on temporary and non-temporary humanitarian grounds, in accordance with Article 3.48<sup>49</sup> of the Aliens Decree 2000, or with Article 3.51<sup>50</sup> of the Aliens Decree 2000, to categories of aliens specifically designated in the prescription of the Aliens Decree 2000.

The policy change is part of the so-called Children's Pardon Agreement (*Kinderpardon-akkoord*) of 29 January 2019. The director of the Immigration and Naturalization Service, as of 1 May 2019, assesses whether there are reasons to grant a residence permit to applicants on humanitarian grounds, though only at the first stage of the asylum procedure. From the announcement of this policy rule change, it became clear that the Immigration and Naturalization Service intended to use this option very sparingly, by judging the requirements specific to an individual, which do not fall under any existing part of the policy for the granting of residence permits.<sup>51</sup> In the explanatory material published alongside the policy change<sup>52</sup>, it is noted that the Immigration and Naturalization Service can pay particular attention to the individual circumstances of a child, and that independent advice may be requested. It is also stated that it is dependent upon the individual case whether or not advice is sought, from whom the advice is sought, and what the advice will entail.

There has been much criticism of the transfer of the discretionary power to the director of the Immigration and Naturalization Service. Most significantly, the Advisory Division of the Council of State has expressed its concern.<sup>53</sup> The Dutch Refugee Council<sup>54</sup> and Defence for Children<sup>55</sup> have also criticized the new policy. Critics believe that the final responsibility for the Immigration and Naturalization Service, including its director, lies with the State Secretary of Justice and Security, implying that they will remain the one to be consulted in certain cases where there are compelling humanitarian grounds for asylum. Critics also observe that situations in which forced return is extremely severe from a humanitarian perspective (*schrijnendheid*) are likely to occur after the first asylum procedure and not during the first stages of the asylum procedure. According to these critics, the abolishment of the option to grant a residence permit in such situations does not mean that these

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<sup>48</sup> Besluit van 8 april 2019 tot wijziging van het Vreemdelingenbesluit 2000, in verband met de aanpassing van enkele regels voor de beoordeling van verblijfsaanvragen ['The decision of 8 April 2019 to change the Aliens Decree 2000, in relation to the adjustment of certain rules for the assessment of applications requesting residence']. Available (in Dutch) at: [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2019Z07669&did=2019D15662](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z07669&did=2019D15662) [accessed 10 August 2019].

<sup>49</sup> Aliens Decree 2000 (Vreemdelingenbesluit 2000), Art. 3.48, second paragraph, introductory phrase and (b). Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0011825/2019-07-01> [accessed 29 August 2019].

<sup>50</sup> Aliens Decree, Art. 3.51, para. 3.

<sup>51</sup> Staatscourant 2019 nr 24564, 30 April 2019, p. 25.

<sup>52</sup> Ontwerpbesluit tot wijziging van het Vreemdelingenbesluit 2000, in verband met de aanpassing van enkele regels voor de beoordeling van verblijfsaanvragen ['The draft decision to change the Aliens Decree 2000 in relation to the adjustment to certain rules for the assessment of applications requesting residence'] (12 April 2019). Available (in Dutch) at: <https://www.raadvanstate.nl/@114085/w16-19-0054-ii/> [accessed 10 August 2019].

<sup>53</sup> State Council Advisory Division (Afdeling advisering van de Raad van State), Samenvatting advies over het vervallen van de discretionaire bevoegdheid ['Summary advice concerning the loss of discretionary powers'] (15 April 2019). Available (in Dutch) at: <https://www.raadvanstate.nl/@114920/samenvatting-advies-1/> [accessed 15 August 2019].

<sup>54</sup> Dutch Council for Refugees (Vluchtelingenwerk Nederland), 'Barmhartigheid verdwijnt uit asielbeleid' ['Mercy disappears from asylum policy'] (1 May 2019). Available (in Dutch) at: <https://www.vluchtelingenwerk.nl/nieuws/barmhartigheid-verdwijnt-uit-asielbeleid> [accessed 15 August 2019].

<sup>55</sup> Defence For Children, Zorgen over afschaffen discretionaire bevoegdheid ['Concerns about the abolishment of discretionary powers'] (24 April 2019). Available (in Dutch) at: <https://www.defenceforchildren.nl/actueel/nieuws/migratie/2019/zorgen-over-afschaffen-discretionaire-bevoegdheid> [accessed 15 August 2019].



situations will not arise in the future.<sup>56</sup> At the time of the research and publication of this report, it remains unclear how this policy change will work in practice.

However, on 30 July 2019, the new State Secretary of Justice and Security announced two new categories of aliens who can be granted a residence permit on humanitarian grounds<sup>57</sup>:

- The first category comprises aliens qualifying for the so-called witness protection programme;
- The second category comprises children for whom the juvenile judge has issued a child protection measure.

The latter refers to situations where problems within a family, following a report from the *Veilig Thuis* (safe house) and research by the Child Care and Protection Board, lead to the juvenile judge issuing a measure for the protection of children against a threat to their development. Such a child protection measure is an *ultimum remedium*, or last resort, and is therefore not applied lightly. It is applicable to children who are part of a family who have no right for asylum in the Netherlands. In such cases, the authorities will check whether the child protection measure can be formally transferred to the country of origin or to a Dublin partner, or to another country within the EU in which the child will enjoy protection, on the basis of the principle of international trust. If the child protection measure is formally non-transferable, it must be implemented in the Netherlands. In the past, the potential to stay was assessed under the denomination of 'poignance' (in Dutch, 'schrijnendheid').

In this policy framework, the return of the family in question is paramount. Only in such cases that the child protection measure is formally non-transferable and has been imposed for at least one year, shall residence for the family be authorised. If the child protection measure ends, the grounds for residence will lapse. In such cases, the rationale is that the threat to the child's development has been lifted and the child can return to their family. The right of residence remains in cases where the child court deems it necessary to extend the child protection measure because the threat to development remains. In the event that parental authority is abrogated by the court at the request of the Child Care and Protection Board, the child is granted a residence permit.

In cases where the protection measure is formally transferable to the country of origin, children are not permitted to stay in the Netherlands. However, when the juvenile judge extends the measure and it has not actually been possible to realize a departure within the duration thereof, the measure will be reviewed following a period of one and a half years, or residence may be granted.

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<sup>56</sup> See, for instance, the comment of the Advisory Division of the Council of State, in *Samenvatting advies over het vervallen van de discretionaire bevoegdheid*.

<sup>57</sup> State Secretary of Justice and Security the Netherlands (Staatssecretaris van Justitie en Veiligheid), *Kamerbrief over humanitaire vergunningen* ['Letter to Parliament concerning humanitarian permits'] (30 July 2019), Available (in Dutch) at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/30/tk-tijdelijk-humanitaire-vergunningen> [accessed 15 August 2019].

## 2.7 The best interest of the child principle in the asylum procedure

The best interest of the child principle is not included in the Dutch Aliens Act. In the asylum procedure, the best interests of the child are principally taken into account in the procedural measures, as follows:

- A guardian should be appointed and is either present during the interviews or not;
- Parents should be present at interviews with the child;
- It should be considered whether or not it is necessary and appropriate to interview a child;
- The duration of the interview should be recorded;
- A decision is to be made on what should be included in the report and with whom the report will be shared.

Recently, a work instruction regarding the interests of the child in Dublin procedures was published by the Immigration and Naturalization Service.<sup>58</sup> This instruction is only in force from 25 June 2019 until 25 December 2019, and specifically aims to provide guidance to civil servants from the IND on how to assess the child's interests against the Dublin procedure.

A refugee status cannot be granted based solely on the best interests of the child. This means that the Immigration and Naturalization Service might consider the best interest of a child in their asylum application, but it is not in itself a basis for international protection.

According to the Immigration and Naturalization Service, the interest of the child might influence the way that the different elements/circumstances are weighed:

*"[F]or example, in Baghdad an adult might be able support himself, but this does not mean a minor could do that. The child needs more support. General and individual circumstances might be weighted differently when the age of the child is taken into account. Under the same circumstances, adults might not receive international protection, but children do."*

– Interviewee IND

The Immigration and Naturalization Service does consider child-specific reasons for persecution, such as female genital mutilation (FGM) and child soldiership, which might augment the assessment of the eligibility for international protection. According to the Immigration and Naturalization Service, the weighing of such circumstances is being documented. Also documented is how the age of the child is taken into account in the decision-making process. The sum-total of this information is considered when deciding whether or not a child can be returned. The reasoning for the decision is given in the final document ('beschikking'), under the guidance of Article 3 of the UNCRC. However, there is no explicit reference to the best interest of the child in the final document.

<sup>58</sup> Immigratie- en Naturalisatiedienst (Immigration and Naturalization Service, IND), and Ministerie van Justitie en Veiligheid (Ministry of Justice and Security), Werkinstructie SUA WI 2019/8 Het belang van het kind in de Dublinprocedure ['Work instruction SUA WI 2019/8: The interest of the child in the Dublin procedure'], (25 June 2019), available in Dutch at: <https://ind.nl/Documents/WI%202019-8.pdf> [accessed 10 August 2019].

The authorities find assessing the best interests of the child difficult, since there are no solid criteria. Guidance and criteria would be helpful, but it would still not be possible to grant a child asylum based solely on the best interests of the child. Criteria should be tailored to the situation of asylum seekers.

Article 3 of the UNCRC is frequently adduced by lawyers in asylum cases in the Netherlands. The Administrative Division of the Council of State (*de Afdeling Bestuursrechtspraak van de Raad van State*), the highest court in migration cases, is however reluctant to apply this principle to individual cases, repeatedly stating that “when the weight to be attached to the best interest of the child in a concrete case is concerned, Article 3 (1) of the CRC, given the wording of the provision, does not contain a norm which is, without further elaboration, directly applicable by a judge.”<sup>59</sup>

In 2016, two Dutch political parties, the Partij van de Arbeid (Labour Party) and GroenLinks (The Greens), introduced a so-called ‘initiative bill’ (*initiatiefwetsvoorstel*)<sup>60</sup> to enshrine the best interests of the child in the Netherlands Aliens Act. This initiative bill proposes a child rights assessment in residence procedures, to ensure that the best interests of the child are explicitly and comprehensively ascertained, as well as granting children priority in residence procedures. The initiative bill proposes not only to take the best interests of the child into consideration in asylum cases, but also in all other procedures in which the interests of migrant children are at stake.<sup>61</sup> The first version of the proposal was postponed. The initiative bill was then adjusted and re-introduced in Parliament on 26 June 2019, with the support of three more opposition parties, the SP (Socialist Party), the Partij voor de Dieren (Party for the Animals) and Lid Van Kooten-Arissen (independent member). The next phase of scrutinizing the bill in the Dutch Parliament will commence in the autumn of 2019. All political parties have shared their written inputs on the draft bill early September 2019. The main concerns seem to revolve around questions whether there is an actual need to enshrine the best interest of the child principle in law (instead of policy) and whether the child rights assessment is the right instrument in case of residence procedures. Also, some parties are concerned about a potential increase in the number of residence permits for children. Also, there are questions on the enforceability of a so-called child rights assessment (including lack of country of origin information), and on granting priority to children. In addition, many political parties want the initiators of the law to request additional (legal) advice of the Council of State on the adjusted version of the bill.

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<sup>59</sup> See, for example, Afdeling bestuursrechtspraak van de Raad van State (State Council Advisory Division, ABRvS), Uitspraak [Statement] 12 maart 2014, 201303599/1/A2, ECLI:NL:RVS:2014:838. Available (in Dutch) at: <https://www.navigators.nl/document/idb-fa4632e1ad24de8be300a5e90017bb5?anchor=id-3b2cf95f-5e3e-48a4-9286-44d48382c4d3> [accessed 15 August 2019].

<sup>60</sup> In the Dutch parliament, MPs have the right to introduce bills themselves. The process of scrutinising initiative bills is similar to that of bills introduced by the Government. While the House of Representatives debates the bill, the MP or MPs who initiated it are seated in the section where Cabinet members usually sit to defend a bill. The member of the Cabinet concerned is also in attendance as an advisor. Other MPs have the right of amendment and may propose changes to the bill. If the House adopts the bill, the MP or MPs who proposed it must also defend the bill in the Senate.

<sup>61</sup> Initiative Bill of Attje Kuiken (PvdA) and Linda Voortman (GroenLinks), ‘Voorstel van wet van de leden Voortman en Kuiken tot wijziging van de Vreemdelingenwet 2000 in verband met het verankeren van het belang van het kind’ [‘Proposal of the bill of the members Voortman and Kuiken to change the Aliens Act 2000 to embed the interests of the child’], Kamerstukken II 2015/16, 34 541, no. 2 (19 September 2016). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-34541-2.html> [accessed 15 August 2019].



Amnesty International questions the thoroughness of the best interest assessment during the asylum procedure, particularly with respect to Dublin procedures. In particular, Amnesty International doubts that the authorities properly assess and take into account the specific needs of an individual, or that proper risk assessments and health checks are being done:

*“[R]isk analyses are not performed with a view to migration detention, let alone with regard to forced return. This assessment should actually be done to check what someone needs [...]. These [assessments] are missing in the asylum procedure. They are missing prior to detention, and so are likewise not performed with a view to forced return.”*

– Interviewee Amnesty International The Netherlands

This is an even greater problem in respect of Dublin cases. “These people are not even interviewed [on their motives for fleeing], so we have no idea as to the risks [they are running from in the country of origin]”, Amnesty International stated. One concrete example given by the interviewees was the case of a girl from Eritrea who was severely physically injured, leaving her covered with scars.<sup>62</sup> However, the details of this physical abuse were unknown to the authorities. “That is the risk of the Dublin procedure”, remarked Amnesty International.

<sup>62</sup> The interviewee refers to the description of a case of an Eritrean woman mentioned in the Amnesty International report *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek* [‘Deported. Human Rights in the context of forced return and departure’], (July 2017), pp. 33-34 and 40-41. Available (in Dutch) at: <https://www.amnesty.nl/content/uploads/2017/07/Rapport-Uitgezet-Mensenrechten-in-het-kader-van-Gedwongen-Terugkeer-en-Vertrek.pdf?x79902> [accessed 15 August 2019].



An immigration lawyer corroborated the necessity of a thorough assessment of the child's needs based on the child's true life experiences, and related his concerns about the current practice:

*"DT&V and the lawyers are all doing bits and pieces, but I wonder to what extent we are trying to get the full story on paper, instead of working with an attitude like 'if you tell me something now, I will box your ears with it next time'"*

– Immigration lawyer

The lawyer believes that this way of working should change, and that there should be a greater focus on trying to obtain a complete picture of the situation, while actors should co-operate "to check what is really going on and find out what more we can together"

An interviewee from Nidos agreed that no best interest determination is performed by the IND itself. Although the IND is responsible for taking into account the interests of the child, the interviewee from Nidos remarked that, in their opinion, the IND only does this when relevant information is brought in by others: "a real independent best interest assessment does not happen according to me", the interviewee remarked. Nidos does not necessarily assess best interests either. The interviewee from Nidos commented that performing such an assessment is difficult within the short time frame of the asylum procedure:

*"[I]n the asylum procedure, the time that someone is actually here is very short. You can only really know who the child is and what he or she needs when you get to know him or her and when you have guided the child and contacted their family members."*

– Interviewee Nidos

In some cases, Nidos does actively pursue an enquiry into the asylum seeker's specific needs, and shares this information with the lawyer. However, interviewees from Nidos sense that the IND is not inclined to take such information particularly seriously.

A best interest of the child determination is sometimes performed by the University of Groningen's Faculty of Behavioural and Social Sciences. Lawyers can request a report from this faculty, which has much expertise on the development of children in the migration context. Interviewees report different experiences with and opinions of these reports. For example, an immigration lawyer questioned the value of reports produced by the University of Groningen, because he doubted the quality and relevance of the content. This lawyer remarked that he sometimes finds the reports of Groningen University to be ill-motivated. They often, he said, use knowledge that has been considered dubious by the IND, and sometimes the information presented is speculative, as when, for example, they conjecture that the "mother will probably not be able to find a job." In his opinion, Nidos's reports are more concise and more useful.



This lawyer, further, experienced the IND not taking the information contained in the University of Groningen's reports seriously. He mentions that in some cases, the reports are not even read by the IND: "The IND wants to do everything in order to not have to take the University of Groningen seriously, otherwise they would have to give too many permits. I think they throw [the reports] in the shredder."

The Dutch Refugee Council asserts that they do make use of the capacity to request reports from experts in individual cases. They stated that they have sent specific questions about individual cases to both the University of Groningen and Defence for Children.

Many interviewees support the stance that the best interests of a child should be identified at an earlier stage, that is, immediately following the application for a residence permit. Nidos, for example, favours an early investigation into matters of best interest during the asylum procedure. According to Nidos, the analysis of the country of origin and the conditions that need to be met before return is permissible should be accounted for prior to a final decision on an asylum application. Information on the country of origin should thus be considered during the first post-application procedure.

The reason that this is not happening is the Council of State ruling that this type of information can only be examined at a later stage in the procedure.

## 2.8 Children residing for many years in the Netherlands – the Children's Pardon

In February 2013, the so-called Children's Pardon was introduced by the government of that time, which was formed of the VVD (Liberals) and the PvdA (Labour Party).<sup>63</sup> This regulation aimed to be a solution for children who had been staying in the Netherlands for at least five years without being granted a residence permit.

The Regulation consisted of two parts, a preliminary regulation and a permanent regulation:

- Under the preliminary regulation, around 700 children and their immediate family members (parents, brothers, sisters) were granted a residence permit.
- The permanent regulation was a much stricter regulation, which required many different criteria to be fulfilled. One such criterion was the requirement to actively co-operate with one's own forced return procedure after the asylum request had been rejected.<sup>64</sup> In practice, this requirement was applied ever more stringently, to the point that no child could qualify for a residence permit on the basis of this permanent regulation.<sup>65</sup>

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<sup>63</sup> This government was installed in October 2012.

<sup>64</sup> By, for instance, attending the return meetings with the DT&V, and requesting the necessary identification documents at the relevant embassy.

<sup>65</sup> For an analysis of the gradual shift in the decision-making process and the related jurisprudence, see Martin Vegter and Machteld van Werve for Defence for Children, 'Staatssecretaris en Afdeling reduceren Kinderpardon tot dode letter Terug bij af' ['State secretary and department reduce the Children's Pardon Agreement to a dead letter'], in *Asiel&Migrantenrecht* (A&MR) 2017, no. 2, pp. 67-74. Available (in Dutch) at: <https://www.defenceforchildren.nl/media/1491/terug-bij-af-staatssecretaris-en-afdeling-reduceren-kinderpardon-tot-dode-letter.pdf> [accessed 16 August 2019].

In 2018, the case of two Armenian children who had been refused asylum under the permanent regulation of the Children's Pardon sparked a political and public debate. In this case, the children's mother had been expelled in the summer of 2017, which led the children to abscond to avoid expulsion. In the aftermath of this case – following the decision of the State Secretary of Justice and Security to allow the children to remain in the Netherlands – discussions began concerning the hundreds of other children who had similarly been rejected and were still living in the Netherlands without a residence permit. According to figures from the Ministry of Justice and Security, some 740 children who had been rejected under the Children's Pardon were still residing in the Netherlands.<sup>66</sup> Around 400 of these children received a residence permit on other grounds, while another 80 were expelled to their country of origin or the country of origin of their parent(s).

In January 2019, the Dutch government reached a new agreement on migration issues. Part of this deal was the so-called Closure Regulation (*Afsluitingsregeling Langdurig Verblijvende Kinderen*), a reassessment of all cases of children who were refused asylum under the permanent regulation of the Children's Pardon due to the requirement that one should co-operate in the process of one's own return.<sup>67</sup> Moreover, other children who had never applied for the regulation, but who had also been staying in the Netherlands for at least five years, were also allowed to apply. Another part of the agreement was the final abolishment of the Children's Pardon and the transfer of the discretionary power of the State Secretary of Justice and Security to the director of the Immigration and Naturalization Service. The reassessment of all cases of rejected children continues, and The Immigration and Naturalization Service expects to have completed this reassessment by the end of 2019.

Children may also request several other types of residence permits, such as a permit for victims of trafficking, a residence permit on medical grounds, or a residence permit on the basis of their family or private life. These differing types of residence permit are not individually discussed within the scope of this research.

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<sup>66</sup> See Nederlandse Omroep Stichting (Dutch Broadcast Foundation), 'Crisissfeer rondom kinderpardon, waar gaat het om?' ['Climate of fear around Children's Pardon Agreement: what is it about?'] (29 January 2019). Available (in Dutch) at: <https://nos.nl/artikel/2269608-crisissfeer-rondom-kinderpardon-waar-gaat-het-om.html> [accessed 16 August 2019].

<sup>67</sup> See Staatscourant van het Koninkrijk der Nederlanden, Besluit van de Staatssecretaris van Justitie en Veiligheid [Government Gazette of the Kingdom of the Netherlands: Decision of the Secretary of Justice and Security] van 8 februari 2019, nummer WBV 2019/1, houdende wijziging van de Vreemdelingencirculaire 2000 ['Amendment of the Aliens Circular 2000'] (11 February 2019). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/stcrt-2019-8116.html> [accessed 16 February 2019].



### 3 Return and reintegration procedures

In the Netherlands, the legal framework of the return procedure can be found in the Aliens Act 2000, the Police Law 2012, and the official instructions for, among others, the police and the Royal Military Police (*Koninklijke Marechaussee*). During migration detention, the Instruction for Violence in Penitentiary Institutions (*Geweldsinstructie penitentiaire inrichtingen*) applies.<sup>68</sup> The Transport and Support Service (*Dienst Vervoer & Ondersteuning, DV&O*) arranges transport from the centre in which asylum seekers stay to either the detention centre or the Family Location, whereat restriction of movement applies and there is a daily duty to report to the authorities.

An asylum seeker whose application procedure has ended unsuccessfully is obliged to leave the country.<sup>69</sup> The asylum seeker complies to this obligation when they leave of their own accord and within the term offered. If the rejected asylum seeker or irregular migrant does not leave of their own accord, the State Secretary of Justice and Security may proceed to forced return.<sup>70</sup>

<sup>68</sup> See *Geweldsinstructie penitentiaire inrichtingen* ['Instructions for Violence in Penitentiary Institutions'] (1 December 2013). Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0010095/2013-12-01> [accessed 16 August 2019].

<sup>69</sup> Aliens Act, Art. 61, para. 1

<sup>70</sup> Aliens Act, Art. 63.

### 3.1 DT&V: Repatriation and Departure Service

In cases of an asylum request being rejected, DT&V invites the migrant who needs to be returned to their country of origin for a conversation on this matter.

Within seven days of a first negative decision, the Immigration and Naturalization Service transfers the case to the DT&V, who start the preparations for return. This means that the preparations for return start almost immediately after the first decision has been taken, while the asylum seeker may still be in the appeal phase of the procedure. In the light of the Court of Justice's decision in the *Gnandi* case, whether or not the DT&V can arrange appointments for returns while the appeal against the first asylum decision is still pending is currently a quandary for the courts.<sup>71</sup>

The DT&V says that they support voluntary return as this is, in their view, better than a forced return or undocumented stay in the Netherlands.

It is questionable whether voluntary return is the truly free choice of returnees. The migrants concerned are often constrained by the negative outcome of their migration procedure, the threat of forced return in case they do not sufficiently co-operate, or the adverse consequences of illegal stay in the Netherlands.<sup>72</sup>

The Dutch government holds that the threat of forced return is essential to voluntary returns. Their reasoning is that some third-country nationals, including children, choose to leave the Netherlands of their own accord simply because they fear forced expulsion. Forced return of accompanied children always includes detention.

#### 3.1.1 Return meetings

The DT&V invites the asylum seeker to return meetings. The meetings are meant to facilitate returns, to identify possible barriers for departure, to verify the person's identity, to assess what kind of (travel) documentation is needed, to determine what is required in the country of return, to develop a return strategy (Return Plan), and to generally aid the asylum seeker with their return or persuade them to leave the Netherlands. Part of the assessment determines whether it is necessary for an asylum seeker to attend the embassy of their country of origin to retrieve replacement travel documents. It should be noted however that attendance at the embassy can only take place once the asylum procedure is fully completed.

On average, the DT&V holds one return meeting per month with a person who is to return. Depending on the urgency and length of the whole return process, the number of meetings can be greater or fewer.

In cases of accompanied children with families, the return meetings are held for the parents. It is standard procedure that children are not present during these meetings. However, there are some exceptions. Children are sometimes present because there is

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<sup>71</sup> See *Gnandi v. Belgium*, EU:C:2018:465, C-181/16, 19 June 2018. .

<sup>72</sup> Amnesty International, *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek*, p. 27. See also Stichting Pharos, *Bewogen Terugkeer* ['Emotional Return'], 2011-2017, p. 16.





nobody available to care for them, or they attend at their own request or the request of their parents.

In cases of families with special medical needs, the DT&V ascertains whether those special needs can be fulfilled in the country of origin/return, and what measures should be in place to meet any needs. In such cases, the DT&V requires confirmation that the return country's provisions are adequate before the return can be made. Special medical needs are checked by the Bureau Medische Advisering (BMA), which identifies appropriate facilities in the country of origin.

#### **Attendance of meetings by lawyers and guardians**

Unaccompanied minors are sometimes joined by their guardian during return meetings. Lawyers are absent from these meetings. One immigration lawyer interviewed for this study explained that, generally, lawyers tend to be passive when it comes to returns. According to this lawyer, many immigration lawyers view the asylum procedure, and thus securing a residence permit for their client, as their primary task. After a negative decision, they tend to defer until a threat of actual forced return occurs, at which point they appeal. This interviewed immigration lawyer feels that the limited involvement of lawyers in the return procedure is not good practice, especially when minors are involved: "As a lawyer you should stand by your client in this phase." This lawyer encourages other lawyers to support unaccompanied minors in their contact with the DT&V, and observes that they might be more inclined to do so if compensation for this part of the asylum process were made available. He stressed that unaccompanied minors would particularly benefit from being assisted by their lawyers in their contacts with the DT&V. One lawyer explained that in some cases, the meetings with the DT&V can be traumatising for minors, as well as for adults. He gave the example of one of his clients, an adult, who "had to recover from



a conversation with DT&V for a week, as a result of how she was treated – the tone, the harshness.”

Some other interviewed lawyers confirmed the experience of this lawyer, and remarked that the tone of conversations with the DT&V changes if an immigration lawyer mentions that they are following a case. One lawyer related that he clearly noticed a difference when he informed the DT&V that he was monitoring the process, let alone when expressing an intent to accompany children in meetings. He remarked that he attempts sometimes to attend these meetings, though he does not get paid for doing so, explaining:

*“If people are maltreated, then I really want to join to see what is happening. I find it unjustifiable to abandon minors and hope that their guardian will read the process and have the guts to intervene in a manner that is not harmful.”<sup>73</sup>*

– Immigration lawyer

Since it is currently uncommon for immigration lawyers to converse with the DT&V, Nidos could play a role by preparing and encouraging guardians to attend these meetings and ask any questions they think appropriate. The added value of questioning the DT&V is illustrated by the interviewed lawyers, who noticed that the more questions were asked, the greater the awareness of the DT&V representative that the purpose of the meeting is not only to sign the request for a laissez-passer (permit or pass), but concerns also the conditions of the return. The just-quoted lawyer noticed that, in many cases, the discussion during the meeting with the DT&V centres on the signing of the document, with little consideration of the best interests of the child and what kind of facilities need to be arranged.

Furthermore, the lawyer mentioned that having the opportunity to ask concrete and detailed questions about what will happen to the child after their return and what their lives might be like can be comforting for the child. For example, not merely stating that the child will move to an orphanage, but explaining in detail how this move is likely to develop in practice and what support is available, can assuage some of the child’s unease. Guardians could also be provided with more information on this matter.

### 3.1.2 Case managers of the DT&V

The DT&V has around 100 case managers at work. These case workers are normally situated at the asylum centres located in different regions of the Netherlands, from where they hold return meetings. There is a dedicated team of 10-12 members dealing with return cases of unaccompanied minors (UASC). The workload for this specialized team is currently (2019) several hundred cases.

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<sup>73</sup> Interview with an immigration lawyer, 26 February 2019.

No special training is required to be part of this special UASC team. There is however constant coaching on the job because of the specific needs of children. This involves training on legislation, on specific communication techniques. When a staff member wishes to work for the UASC team, there is a particular selection procedure. The UASC team works nationwide, and meets twice-weekly to discuss policy, work methods, and cases, as well as to provide coaching.

In contrast, according to some interviewed organizations and lawyers, case managers for unaccompanied minors at the DT&V do not receive specific training aimed at communication with minors. An immigration lawyer suggests that children are often afraid of the meetings with the DT&V, particularly because of the frequently severe tone of the DT&V contact. Aside from being unpleasant for children, this rough expression proves counterproductive for the DT&V themselves, as children do not feel comfortable with providing further information on any family members that they have at home. According to the interviewed organizations, the lack of training for both immigration lawyers and employees of the DT&V on dealing with children does not lead to complete lapses in the support that children receive prior to return. It does, however, detriment the quality of the assistance provided.

The UNHCR, in their recent report on unaccompanied children in the Netherlands, further emphasize the need for child-specific communication training for organizations and government departments who work with unaccompanied children in the Netherlands.<sup>74</sup>

### 3.2 Financial and reintegration support in case of voluntary return

The DT&V co-operates with the International Organization for Migration (IOM) and several NGOs active in the field of returns, by providing financial support for their return programmes. The NGOs involved include Solid Road, the Dutch Refugee Council (*VluchtelingenWerk Nederland*), and Bridge to Better. These organizations have their own network in the countries of return or origin.

There are several levels of support which can be offered to returnees: basic return support, reintegration support, and additional support.<sup>75</sup> The IOM supports migrants with their voluntary return, and has designed several regulations for financial support to those migrants who wish to leave the Netherlands of their own accord. The Return and Emigration of Aliens from the Netherlands (REAN) programme is the basic arrangement for such cases. The IOM also provides support by way of the AVRR-NL (reintegration support through Assisted Voluntary Return and Reintegration from the Netherlands project). Besides these programmes, there are special return projects.<sup>76</sup> Support can be given in the form of financial assistance, various types of in-kind (non-monetary) support

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<sup>74</sup> See UNHCR, *In de Eerste Plaats een Kind. Bevindingen, aanbevelingen en oplossingen in het belang van alleenstaande minderjarige vreemdelingen in Nederland*.

<sup>75</sup> See DT&V and Ministerie van Justitie en Veiligheid, *Ondersteuning van vrijwillige terugkeer en herintegratie voor migranten die terugkeren vanuit Nederland* ['Support of voluntary return and reintegration for migrants returning from the Netherlands'] (December 2017). Available (in Dutch) at: [https://www.dienstterugkeerenvertrek.nl/binaries/Ondersteuning%20vrijwillige%20terugkeer%20en%20herintegratie\\_tcm49-301112.pdf](https://www.dienstterugkeerenvertrek.nl/binaries/Ondersteuning%20vrijwillige%20terugkeer%20en%20herintegratie_tcm49-301112.pdf) [accessed 16 August 2019].

<sup>76</sup> For a list of these schemes, see the project overview of the DT&V, available (in Dutch) at: <https://www.infoterugkeer.nl/terugkeer-projecten/overzicht-projecten/> [accessed 16 August 2019].

and/or coaching, and professional training possibilities. Most return projects concern designated countries (such as Albania and Armenia).

The IOM organizes return meetings if a person asks for support from the IOM to arrange a voluntary return. In these return meetings, the IOM counsellors discuss with the parents how the IOM can support their return. Parents explain the needs of their children. The IOM also organizes general information meetings on returns, but migrants hesitate to attend them. Return is seen as a very individual matter; migrants typically do not want others to know that they are considering return.

There are two assistance packages for voluntary return:

- 1) The Basic return package (not available for European countries except in cases of human trafficking), consisting of:
  - a. Flight ticket;
  - b. Arranging documents at the embassy of the country of origin;
  - c. Providing money for the first days after return;
  - d. The option to contact counsellors available in the country of return and arrange a visit during consultation hours.
- 2) The Reintegration package, consisting of:
  - a. In-kind support;
  - b. A small sum for accommodation;
  - c. Support to set up a small business;
  - d. Educational assistance;
  - e. Flexibility – the content of this package depends on the needs of the person.

Voluntary return to certain countries (most of them Development Assistance Committee (DAC) countries<sup>77</sup>) is eligible for financial support. This is €1800 per adult (of which €300 is provided in cash), €2800 per child with family, and €2800 per unaccompanied child. Persons returning to non-visa countries receive less financial support (€100 per adult and €40 per child).

Vulnerable people can request exemptions, despite their return not being eligible for the provision of financial support. This group includes unaccompanied minors, victims of human trafficking, and young adults with small children.

Families receive support chiefly for education (school fees), and find language classes for their children of the most importance.

The IOM can arrange a return within 1 month, if travel documentation is available. Half of the voluntary returns are dealt with inside a 4-week period.

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<sup>77</sup> Countries and territories that are eligible to receive official development assistance (ODA) from the Organization for Economic Co-operation and Development (OECD). These comprise all low- and middle-income countries based on gross national income (GNI) per capita as published by the World Bank, with the exception of G8 members, EU members, and countries with a firm date for entry into the EU. The list also includes all Least Developed Countries (LDCs) as defined by the United Nations (UN). For the latest list at the time of writing, see: [http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC\\_List\\_ODA\\_Recipients2018to2020\\_flows\\_En.pdf](http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf) [accessed 10 August 2019].

Solid Road is a non-governmental organization that assists (former) asylum seekers and people lacking residence permits with voluntary return to their country of origin. Solid Road's 'The Green Way' project is specifically aimed at the voluntary return of Armenian families to their home country. The project co-ordinator of The Green Way developed this scheme, and commented:

*"The focus [of voluntary return] is often on assuring that people have an income upon return. I have a background in social work with children and I noticed that there was very limited attention for the support of children within return."*

– Project co-ordinator The Green Way

Within the framework of The Green Way, Armenian families receive a reintegration package that includes:

- Housing, including gas, water and electricity for a maximum of twelve months.
- Professional education for parents and/or assistance with finding employment for a maximum of twelve months per person.
- Armenian tutoring for children for a maximum of six months. Formal schooling for children is also sought, and transmission from the school in the Netherlands to the school in Armenia arranged.
- Assistance with reintegration for up to twelve months and, if needed, socio psychological support.

### 3.3 Financial and reintegration support in case of forced return

Several projects provide in-kind support to persons who are forced to leave the Netherlands. These are funded through the European Return and Reintegration Network (ERRIN). ERRIN is a DT&V-led project for which European Member States collectively 'buy' reintegration support in the countries of origin. The IOM is not one of the contracting parties. This project applies to the following countries: Iraq, Afghanistan, Morocco, Ukraine, India, Sri Lanka, Pakistan, Nigeria, Ghana, Brazil, and Bangladesh.

Support is provided through in-kind assistance to the equivalent of €1000 for each adult member of the family and €600 per child. There is also assistance for finding a house, a job, or starting a business. The support is provided by local organizations; the Dutch embassy does not directly assist.

Few asylum seekers however request this kind of support.

## 3.4 Returns of children

### 3.4.1 Preparation for return

There is no specific policy among the Dutch authorities themselves for preparing children with families for their return. They are not specifically invited for discussions or otherwise consulted. In the case of accompanied children, the care and support prior to and during forced return is a responsibility of the parents. In cases of unaccompanied children, this responsibility lies with Nidos. The DT&V does speak with unaccompanied children respecting their return. Guardians are permitted but not obliged to be present during these conversations.

In a 2012 report on a durable return perspective for unaccompanied children, Nidos observed that an excessive emphasis on return, as part of the guidance by guardians, is not appreciated by unaccompanied children.<sup>78</sup> These children are generally preoccupied with securing their residence in the Netherlands, and are thus disinclined to think about returning to their country of origin. Accordingly, the subject of return is sensitive and largely influences the relationship between the guardian and the child. It is naturally difficult for the guardian to protect the interests of unaccompanied children, who are often traumatized when their asylum request is rejected, and as a result are loath to speak of return.

Referring specifically to Armenian asylum seekers, Solid Road reports that conversing about return is very difficult. Respondents to Solid Road's research project relate that they are unwilling to discuss the option of return, because this is for them an unwanted option. They tend to close themselves off entirely from their country of origin.<sup>79</sup> Solid Road reports all respondents saying that guidance on voluntary return is for them a last resort, which they would consider only when it is absolutely beyond doubt that there is no option left for them to acquire a residence permit in the Netherlands.<sup>80</sup> In most cases, Armenians believe that such options do remain.

Sometimes, it takes four to five intake sessions for a family to decide upon voluntary return. In preparation for return, families subsequently have regular meetings with Solid Road. During these meetings, a tailor-made reintegration plan is made. Families, for instance, often desire housing near to their children's school, which needs to be identified together with Solid Road. In one case of a child under the supervision of Nidos (as a child protection measure), Solid Road, Nidos, and the local partner organization, Diakonia, closely worked together to identify what the child required and to better understand the social care and child protection that could be offered in the country of return. Based on the information gathered, the organization jointly developed a tailor-made reintegration plan.

The co-ordinator of The Green Way project of Solid Road holds specific coaching sessions with the children of the families who decide to return. These coaching sessions can have different forms:

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<sup>78</sup> Stichting Nidos, Een duurzaam (terugkeer) perspectief voor ama's. Commitment van het kind en commitment van de familie; de dubbel C-benadering ['A sustainable (return) perspective for ama's (alleenstaande minderjarige asielzoekers – unaccompanied minor asylum seekers). Commitment of the child and commitment of the family: the 'double-C' approach'] (Utrecht: July 2012), p. 10.

<sup>79</sup> Solid Road, *Hulp bij Terugkeer naar Armenië. Een verkennend onderzoek naar factoren die van invloed zijn op vertrekplichtige Armeense gezinnen om al dan niet voor vrijwillige terugkeer te kiezen* ['Help for Return to Armenia: An Exploratory research into factors that influence expelled Armenian families to choose non-voluntary return'], Tilburg/Nijmegen, June 2018, p. 15. Available (in Dutch) at: <http://www.solidroad.nl/images/pdf/onderzoeksrapport-solid-road-hulp-bij-terugkeer-naar-armenie-2018-lage-resolutie.pdf> [accessed 12 August 2019].

<sup>80</sup> Ibid., p. 16.



*"I had a family whose children had never been in Armenia. [...] When I went to Armenia, I asked the daughter what kind of pictures she wanted to have. What do you want to see in Armenia? The girl said she wanted to see a swimming pool. These are specific child factors that you cannot think of yourself. So, I took pictures of a swimming pool."*

– Co-ordinator The Green Way Project

The preparation for returns can take three to four months. If more time is needed, the project co-ordinator will discuss this with the DT&V.

Solid Road currently supports seven children from Armenian families. So far, two boys and two girls have returned to Armenia with their parents. Three other children were still in the Netherlands at the time of the present study. Three Armenian families showed an interest in voluntary return, but eventually decided to withdraw from the programme. Armenian families considering voluntary return with Solid Road often have young children. The interviewee from Solid Road's Green Way project commented upon how this tends to affect the parents' thinking on return:

*"Parents often say, 'my child is young, they will still adjust easily, so let's return now'. They want to avoid the fact that as children grow older they become more rooted here. Older children are themselves more assertive as well. I spoke with parents that say, 'I am ok with going back, I see that there is no perspective here, but I fight with my children every day because they just do not want to go'. I sense that parents sometimes cannot stand up to their children, because children are very assertive here and at the same time parents can be relatively weak because of the whole situation."*<sup>81</sup>

– Solid Road

Within the framework of The Green Way, a toolkit has been developed for preparing children for return. This toolkit consists of instructions for professionals and volunteers who support children with return, and a brochure for parents containing answers to common questions (e.g. 'Why is it important to inform your child about return? How might your child react?'), as well as a road map for children to achieve their return. Children can use this road map with their parents or teachers.

Solid Road is currently assessing whether the support that they offer families for voluntary return can be extended to countries other than Armenia.

### 3.4.2 Understanding return procedures by migrant children

The DT&V is of the opinion that children have a reasonable understanding of the return procedure. The DT&V continuously informs the children concerned of the particulars of the return process, and repeats this information to confirm that it has been retained and comprehended by the child. There are also available leaflets specifically tailored to unaccompanied minors. Nidos, the Dutch Refugee

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<sup>81</sup> Interview with Solid Road, 13 February 2019.

Council, the COA, and lawyers also provide information. As stated by the DT&V, however, this results in children receiving discrepant information, as some of the actors involved, lawyers among them, will use all legal means to ensure that a child has the right to stay, while others will inform the child that their return is inevitable. According to the interviewee from the DT&V, legal actions aimed at preventing return are not necessarily in the best interests of the child.

Various organizations consulted in the scope of this study observed that different stakeholders concerned with families or unaccompanied minors, both in the asylum procedure and after return decisions are made, send contradictory signals to those who might need to return to their country of origin.

Solid Road gave an example of children being given opposing indications from their parents and schoolteachers. The teachers started a campaign to try to have the family in question remain in the Netherlands, and told the children that if they tried their best at school, they might be allowed to stay. But there was no prospect of this family staying in the Netherlands, and the parents were in fact already preparing for voluntary return.

The Child Care and Protection Board stresses the need for co-operation in the return process. They provided a similar example of a girl whose parents were not co-operating with their return, which resulted in the girl eventually being placed in a foster family and the involvement of many organizations. The foster family was discussing what the girl's life in the Netherlands would be like, and asked her what she wanted to do, to which she replied that she wished to study. The DT&V, conversely, was speaking with the girl about her return. Nidos was also involved in talks with the girl.<sup>82</sup>

In this and many other cases, differing and often contrary signals are given to the children and their family. The Child Care and Protection Board state that much progress could be made with respect to co-ordination. Actors need to co-work and settle precisely who is to do what.

Amnesty International states that all migrants awaiting forced return – but especially vulnerable people including children – naturally have a keen interest in receiving dependable information. Such knowledge includes how the transfer of (medical) care and the provision of shelter is arranged, and what can be expected upon return to their country of origin or a third country. Clarity on these issues might assist in making well-informed choices, and can prevent medical problems upon return or and/or tensions during a forced return.<sup>83</sup>

In 2016, the Dutch Ombudsman emphasized the importance of transparency in any agreements that the DT&V makes with the receiving authorities of the country of origin or a third country, such as medical authorities. The Ombudsman recommended, for example, the immediate

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<sup>82</sup> The interviewee explained this as follows: "Nidos should just execute the supervision order. But on the one hand they want to offer support to such a family. That is what happens with a supervision order. For the parents, eventually, to be able to care again... But the parents are in such an insecure situation. A situation in which they do not co-operate. That is an extra-difficult element regular certified institutions have. They also have to make sure, of course, that parents start to co-operate again. But if they do not want that because they want to stay here, are they then using their children in an instrumental way? Or are they really not able to? That is a very complicating factor when children are concerned."

<sup>83</sup> Amnesty International, *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek*, p. 31.



provision of documents on travel conditions to the returning migrant.<sup>84</sup>

It is critical that a child, accordant with their rights under Article 12 of the CRC, is able to give their own perspective during preparations for the return. In their report on Afghan returnees, Save the Children observes that the majority of those children who completed a questionnaire on their experiences of returning declared that they had no say in the decision to return. Save the Children's report highlights the importance of families being kept informed throughout the return procedure.<sup>85</sup>

According to the IOM, there is a serious deficiency of child-friendly information on returns that could facilitate discussions between parents and children. In IOM return meetings, IOM counsellors hold conversations only with parents, to talk about how their return can be supported. In these meetings, parents may choose to discuss the needs of their children. Ultimately, parents make the decision, and have to then convey this to their children, though it is unclear how they generally approach this discussion. There are no existing guidelines for IOM counsellors to discuss returns with children.

### 3.4.3 Maintaining family unity

When a family is to be returned from the Netherlands, the family members will generally do so together. If this is not possible, separated return is an option if the case has been assessed

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<sup>84</sup> National Ombudsman of the Netherlands, Een onderzoek naar informatieverstrekking door de Dienst Terugkeer en Vertrek ['An investigation into information provision by the Repatriation and Departure Service'], 20 januari 2016, no. 2016/005, p. 6. Available (in Dutch) at: [https://www.nationaleombudsman.nl/system/files?file=rapport/2016\\_005.pdf](https://www.nationaleombudsman.nl/system/files?file=rapport/2016_005.pdf) [accessed 16 August 2019].

<sup>85</sup> Marion Guillaume, Nassim Majidi, and Samuel Hall, for Save the Children, From Europe to Afghanistan: Experiences of Child Returnees (Save the Children Sweden and Save the Children International, 2018), p. 35. Available at: [https://resourcecentre.savethechildren.net/node/14238/pdf/sc-from\\_europe\\_to\\_afghanistan-screen\\_1610.pdf](https://resourcecentre.savethechildren.net/node/14238/pdf/sc-from_europe_to_afghanistan-screen_1610.pdf) [accessed 16 August 2019].

by the DT&V.<sup>86</sup> The Process Protocol D8 (Procesprotocol D8) of the DT&V and the Official Instruction 2005/4 clarify in which cases separated returns are permissible.<sup>87</sup> This can be the case if one of the family members poses a threat to public order, or frustrates the return. Separated return may also occur in cases of a Dublin referral for part of a family, or with a family consisting of different nationalities.<sup>88</sup> In cases of an intended separated return, the State Secretary of Justice and Security must always assess whether the separated return will cause distress. If so, the interests of the family in avoiding this distress must be balanced against the interests of the State to proceed with the separated return.

### **The case of the Armenian children Howick (13) and Lili (12)**

In the summer of 2008, two children and their mother arrived in the Netherlands and asked for asylum. Their asylum request was rejected and the appeal against this decision was considered unfounded. The State authorities, however, failed to expel the family to their country of origin. In October 2013, the two children, Howick and Lili, then aged 8 and 7, filed a request for a residence permit on the basis of the Children's Pardon together with their mother. This request was rejected. The Immigration authorities first refused the request because of the failure of the mother to establish her identity and nationality. Later, these grounds for rejection were withdrawn, and instead the co-operation with return principle was cited. During this asylum procedure, as in others, a thorough assessment of the best interests of the child was absent. The case was rejected on the formal ground that co-operation with return had been insufficient. Howick, Lili, and their mother filed an appeal against this decision, and later submitted a higher appeal. The appeals were unsuccessful when reviewed by the court and the Council of State. The process that began with the Children's Pardon request made by the family in 2013 ended in January 2016 with the decision of the Council of State to deny the appeal.

#### **The forced return of the mother of Howick and Lili**

On 8 August 2017, around nine years after the family arrived in the Netherlands, the Dutch authorities arrested and detained the mother of Howick and Lili with the intention of expelling her to Armenia. The State authorities also intended to detain Howick and Lili themselves. However, as Howick and Lili were not present at the so-called Family Location on the morning the authorities arrived there, their mother alone was detained. Being convinced that her children would face an extremely difficult future if they were to be expelled to Armenia, and accordingly that this would not at all be in their best interests, the mother refused to disclose the location at which her children were staying at that time. The State authorities nonetheless decided to proceed with the forced return of the mother, which was scheduled for 14 August 2017.

<sup>86</sup> Aliens Circular 2000 (A), A3/6.2. Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0012287/2019-08-01/#Circulaire> [accessed 16 August 2019].

<sup>87</sup> Neither the Process Protocol nor the official Instruction are any longer publicly available.

<sup>88</sup> DT&V, *Process Protocol D8* (in possession of the author).

The lawyer of the family attempted to prevent this forced return. It was argued, inter alia, that forced return of the mother without her children would be contrary to the best interests of the child, and would violate their rights under Articles 3, 6, and 9 of the UNCRC. However, the State Secretary of Justice and Security persisted in his intention to expel the mother of Howick and Lili, independently of her children. The Court of the Hague upheld this decision, ruling that the mother not disclosing her children's whereabouts made her culpable for the situation at hand, and thus her impending forced return without her children. On 14 August 2017, Howick and Lili's mother was deported to Armenia. Since then, she has resided in Yerevan.

Child protection measures for Howick and Lili after their re-emergence in the Netherlands. The day after the forced return of their mother – 15 August 2017 – the Child Care and Protection Board asked the court of Utrecht to appoint a guardian for Howick and Lili to take care of them. At that time, the children were still missing. The court accepted the Council for Child Protection's proposal and appointed Nidos, the Dutch Guardianship authority, as the preliminary guardian. On 25 August 2017, the children were found and placed under the care of a foster family within their social network.

The Child Care and Protection Board showed great concern for the situation of Howick and Lili, whose predicament they decided to investigate. In November 2017, the Child Care and Protection Board requested from the court of Utrecht a supervision order (in Dutch, an *ondertoezichtstelling* (OTS)) for the children for a duration of six months, reinstating the parental authority of the mother in Armenia. The Court decided to issue this supervision order. Later, in May 2018, this supervision order was extended for a further six months.

#### **The asylum request of Lili and Howick**

In May 2017, Howick and Lili filed an asylum request with the Dutch Immigration authorities. This was their first individual asylum request based on their own merits, having been two and three years old respectively when their mother asked for asylum on their behalf. Howick and Lili's asylum request was founded principally on the fact that the Dutch authorities had failed to thoroughly investigate their needs in case of a forced return, and had refused to fully take into account the development goals that the Child Care and Protection Board designed, the fulfilment of which the Council considered essential prior to the return of Howick and Lili to Armenia. The set goals included a safe place to stay, a fitting education, medical care, and psychological support for both the children and their mother. An important conclusion drawn by the Child Care and Protection Board was that the mother of Howick and Lili was considered unable to raise and take care of her children due to her psychological state.

The Immigration authorities rejected the asylum request, arguing that they had done enough to prepare the return of Howick and Lili to Armenia and that Dutch policy did not warrant any further preparations or guarantees to be put in place.

The Child Care and Protection Board was of a different opinion, as were the Nidos and the Dutch Institute for Forensic Psychiatry. All of these organizations issued reports stressing that the development of Howick and Lili would be severely damaged if they were to be forcibly returned to Armenia under the circumstances then present. They all argued that further guarantees should be put in place so that the development of Howick and Lili would be safeguarded after their forced return. There were, for instance, many questions



concerning the appropriateness of the shelter to be responsible for housing Howick and Lili as long as their mother was incapable of doing so.

On 19 July 2018, the court of Utrecht ruled in favour of Howick and Lili, contending that the State Secretary of Justice and Security erred when he left the return conditions entirely out of the assessment of Lili and Howick's asylum request. The Court decided that these conditions must form part of the assessment in an asylum procedure, and obliged the State Secretary of Justice and Security to file a new decision within six weeks. The court, moreover, emphasized the specific vulnerability of migrant children and the relativity of the assessment under Article 3 of the ECHR, which is warranted in cases of children.

The State Secretary of Justice and Security did not accept the court of Utrecht's decision, and decided to file a higher appeal with the Council of State. On 24 August 2018, the Council of State decided that the higher appeal made by the State Secretary of Justice and Security was founded. According to the Council of State, the conditions for return did not have to be taken into account in the assessment of the asylum claim, that is, as part of the process of deciding whether asylum permits should be granted. The Council of State did, however, evaluate the claim of a violation of Article 3 of the ECHR in respect of the forced return itself, and ruled that the circumstances the children would risk facing upon return were not considered to be so harmful for their development that they would constitute inhuman or degrading treatment as prohibited by Article 3 of the ECHR.

Following the Council of State's judgement, the State Secretary of Justice and Security was able to proceed with the forced return of the Lili and Howick, despite the Child Care and Protection Board considering this to be a serious threat to their wellbeing and thus strongly opposing it, as did the guardianship organization Nidos. The case is a clear illustration of the tension in the Netherlands between the enforcement of migration policies and the duty to assure child protection.

Yet, in the end, the State Secretary of Justice and Security decided to use his discretionary power after all, and allowed the children to remain in the Netherlands.

### **Inquiry**

Following the above events, the State Secretary informed the House of Representatives on 10 September 2018 of his decision to set up an independent committee of inquiry to investigate all aspects that contribute to the long-term residence of foreigners, even after one or more refusals, as well as possible solutions to prevent long-term residence without a permanent right of residence.

The State Secretary also asked the Justice and Security Inspectorate to investigate the process aimed at the departure of the Armenian children. This concerns the actions taken by the organizations involved in the immigration chain from the decision of the Administrative Jurisdiction Division of the Council of State of 24 August 2018. In September 2019, the Dutch Inspection for Justice and Security presented the findings of the inquiry into the leaving process of Armenian children to the Minister and State Secretary of Justice and Security. After the inspection has consulted the (authorized representatives of) the children, the report will be made publicly available.

#### 3.4.4 Return plan

The DT&V always develops a return plan or strategy. This internal document is not signed by the asylum seeker, but the asylum seeker needs to sign a request made to the relevant embassy for the replacement of travel documents. In cases of unaccompanied minors, the return plan should be designed together with the guardian from Nidos, and a copy of the plan is sent to the guardian.

In its report on returned children to Armenia, Defence for Children proposes the drafting of individualized return plans.<sup>89</sup> The return plan should not just contain hypothetical opportunities for education, health care, and housing, but should also describe in every individual case how these requirements may be fulfilled in. Defence for Children asserts that barriers need to be removed for children to have their right to education respected in practice, and to be able to access health care and social services.

An interviewee from Nidos added that the return plan should indicate which conditions are to be set and how the stakeholders involved should co-operate to facilitate the return:

*“The whole idea is that DT&V writes a return plan in every case and that the child, the guardian and the contact person of DT&V think about this together. In this plan concrete actions are agreed upon that will be taken in the context of the return, such as contacting the Red Cross, contacting IOM, but also the question of what DT&V itself will do. The objective is that there will be an appointment every month to discuss the state of affairs with respect to this return plan. But in practice this does not happen. Often there are no plans at all.”*

– Interviewee Nidos

Both of the interviewees from Nidos and an immigration lawyer reported that the DT&V does not always prepare individualized return plans. The immigration lawyer suggests that standardized return plans instead tend to be used. The current lack of individualized return plans makes it difficult for migrants and refugees to prove their co-operation with the procedure, which is necessary to obtain a no fault permit (see section 2.5, *ante*). Nidos encountered only one case in which a no-fault permit was granted during the past five years. Since it is often clear that a child is unable to return, the issuing of more no-fault permits would be expected. That this is not the case is perhaps because a lack of individual return plans makes it difficult to prove co-operation. Specific questions to the DT&V on individual arrangements can encourage them to focus on the facilities that need to be arranged prior to return.

<sup>89</sup> M. Goeman, M. A. Vegter, A. E. Zijlstra, and G.T. Bonhage-Talsma, for Defence for Children, “‘Ik wil terug naar Nederland’, monitoring van teruggekeerde gewortelde kinderen in Armenië” [“I want to go back to the Netherlands”: monitoring of returned children with roots in Armenia] (2017), p. 37. Available (in Dutch) at: <https://www.defenceforchildren.nl/acueel/publicaties/migratie/rapport-ik-wil-terug-naar-nederland> [accessed 16 August 2019].

The lack of individualized return plans not only lessens the opportunities for people to receive a no-fault permit, it also means that there are no guarantees that the rights of children are preserved. Amnesty International believes that a transparent and detailed description should be made of someone's destination, especially when it concerns families with children. Such arrangements and assurances should not only be associated with voluntary return, especially in the case of children.

The interviewee from Solid Road suggests that children be more clearly taken into account and, wherever possible, engaged in the return process. Matters such as housing and education could be discussed with children. Education, including the opportunity to complete a course of study at a school in the Netherlands before starting at a school in the country of origin, is an important subject, but receives limited attention according to this interviewee. In some cases, contact persons at the DT&V focus on housing and education, but they are not part of DT&V policy: "[housing and education] are matters that one can discuss with parents, but you can also discuss it with children in a child-friendly manner, for instance by showing the street on your laptop," commented the interviewee from Solid Road.

#### 3.4.5 Fear of return

Lawyers and organizations interviewed for this report described children and their families frequently reacting with great emotion to a refusal of their asylum application and the consequent possibility of return. Children weep, become angry, withdrawn, and sometimes threaten suicide. These emotions are linked to a variety of fears, which are detailed in this section.

The fear of returning to the country of origin can result from safety concerns, especially for those from Afghanistan. The Dutch Council for Refugees explains that unaccompanied Afghan minors, who are expected to return as soon as they reach eighteen years of age, dread the prospect of going back:

*"Afghan boys panic, truly panic. They are afraid to return to a country that is not safe for them. Often these boys have been recruited by the Taliban. Or there is a trauma underneath their panic that they have not shared yet. [...] Sometimes I feel the reaction of panic does not just reflect the general unsafety in Afghanistan. [...] We have several boys, around eight to ten boys, that eventually shared LGBT-related issues and accounts of sexual violence by the Taliban."*

– Dutch Council for Refugees

Solid Road mentioned a case whereby two Armenian brothers feared being obliged to perform military service upon their return.

One immigration lawyer described the case of an Afghan girl who fears forced marriage and violence upon her return:

*"I am currently dealing with the case of an Afghan girl who was raped during her journey to the Netherlands. Her parents have an asylum story which will not stand. But the girl can explain her fears very well: "I have to marry upon return." If you get married in Afghanistan, your virginity is tested. Various reports describe that practice. But the court said it will likely not be that bad. This is a girl who has been forcibly admitted to a psychiatric institution due to these fears and suicide attempts. The only thing she says is that she will die if she returns. She says she will do it right here. One time she threw one of these glasses on the ground and started cutting her arm right here."*

– Immigration lawyer

The location manager of the COA observes that for unaccompanied minors, the fear of returning after having failed to complete the purpose for which they left home also plays a role. The location manager further mentions in this respect that Eritreans often come to the Netherlands with the aim of providing for their family. If they are unsuccessful, feelings of guilt and shame arise. There is much pressure on these asylum seekers, who, in many cases, spend a great deal of money on the journey to the Netherlands, all of which must be paid back.

In some instances, unaccompanied minors express fear of violence towards themselves or family members when they believe that they have failed to live up to expectations and need to repay money.

Solid Road draws attention to the fact that general insecurity at what will happen to them upon return instils fear in children. Often children also follow the negative image that parents paint of a country. This image further heightens their fears.

The location manager of the COA also points out that sometimes, both unaccompanied minors and families are fearful of their fellow country people. Peer pressure prevents some individuals from opting for voluntary return. When someone chooses voluntary return, their peers will in many cases turn against them. People often feel that those choosing voluntary return are indirectly declaring that it is safe to return to a certain country, and thus that there is no reason to fear. This, it is thought, might negatively affect the chances of their compatriots. "People really need to be protected if they make such a decision," the location manager of the COA contends.

### **3.5 Implementation of best interest principle in return procedures**

According to Article 10.2 of the Return Directive, the return and forced return of unaccompanied children are to be performed with appropriate attention given to the interests of the child.

As mentioned earlier, there is no specific provision in Dutch law for prescribing the application of the 'best interest of the child' principle as set down in Article 3 of the CRC. Neither is there any obligation in law to specifically address these interests during the preparation for return. The DT&V relies on the Best Interests Assessment (BIA) carried out by

the IND, and does not perform any reassessment during return procedures; no personalized BIA of the child is conducted or documented. It is urged in many reports from NGOs that a more thorough best interest of the child assessment be performed in the return procedure, and that specific return plans for children are preplaced to investigate all the needs of a child in cases of return, while making arrangements in the country to which the child is returning to ensure that these needs are met.

One immigration lawyer interviewed for this report confirmed that conditions for the return of children are seldom set in migration procedures. He was in fact unaware of *any* asylum case in which certain facilities were to be made available as a condition for return. He did mention however that this happens in Dublin cases. He also disclosed that he had never made an appeal on the grounds that conditions for return were absent.

Danielle Zevulun, a researcher at the University of Groningen, has also drawn attention to the problem caused by the absence of care objectives for children who are to be returned. She asserts that most of the risk factors for the children's wellbeing identified in her research<sup>90</sup> might well have been previously ascertained had there been a proper assessment of the child's interests in line with Article 3 of the CRC. She further affirms that, if it is decided after such an assessment that the child can return safely to the country of origin, the family and the child should be suitably prepared and a return plan be put in place to assure the child's rights and development opportunities.<sup>91</sup>

### 3.6 The role of the Child Care and Protection Board

In some cases of children who are to be returned, the Child Care and Protection Board (Raad voor de Kinderbescherming (RvdK)) is involved. The Child Care and Protection Board defends the interests of every child in the Netherlands whose development and upbringing are in danger. This also holds for children without Dutch nationality, whether they have a residence permit or not. The Board is a public organization within the Ministry of Justice and Security.

The duties and responsibilities of the Child Care and Protection Board follow from, *inter alia*, international conventions and are set forth in Dutch law, as in for example Article 1:238 of the Civil Code. The Child Care and Protection Board assesses, as part of its protection investigation (*beschermingsonderzoek*) alongside the child, the parents, and the broader network surrounding the child, what is potentially beneficial and disadvantageous about the child's particular circumstances, what accordant actions should be taken, and what possibilities are open to parents and the network for resolving any concerns. If necessary, the Child Care and Protection Board can request that the court imposes a child protection measure, such as a supervision order (*ondertoezichtstelling (OTS)*). In its conclusions, the Child Care and Protection Board describes which goals need to be achieved for a child to

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<sup>90</sup> These include poor health; no connection with Kosovo (one of the countries studied) due to a long stay abroad; unsafety because of blood feuds; ill-being of the parents; single-mother households; and no support network.

<sup>91</sup> D. Zevulun, *Repatriation and the best interests of the child: The rearing environment and wellbeing of migrant children after return to Kosovo and Albania*. [Groningen, 2017]: Rijksuniversiteit Groningen, p. 173. Zevulun's study is available, by chapter, at: [https://www.rug.nl/research/portal/en/publications/repatriation-and-the-best-interests-of-the-child\(5ce01b75-d9e4-4e37-b06c-8e7ff75d3227\).html](https://www.rug.nl/research/portal/en/publications/repatriation-and-the-best-interests-of-the-child(5ce01b75-d9e4-4e37-b06c-8e7ff75d3227).html) [accessed 20 August 2019]. Note, however, that the Acknowledgements and Chapter 5 thereof, and the thesis in its entirety, are accessible only by request.



resolve the stated concerns. In cases of a child protection measure, these goals direct the certified institution (*gecertificeerde instelling*) on how to work with the family. While-ever the development goals are not met, a supervision order will remain in place.

The involvement of the Child Care and Protection Board in cases of children who are to be returned is a difficult issue, as the Board is concerned only with the interests of the child, whereas in migration law the best interest of the child is just one of various elements that are considered. In a statement from the Child Care and Protection Board published on their website shortly after the earlier-mentioned case of an Armenian brother and sister was resolved, the Board acknowledges that the weight attached to the interest of the child is dependent on the individual case and the details readily available thereof. Thus, decisions that are taken on the grounds of migration law and policy may prevail over child protection law. The administrative judge will only assess whether or not the IND has included the interests of the child in their report and balances this against other interests when making a decision, whereas the juvenile judge in civil proceedings places the interest of the child at the forefront.<sup>92</sup> The Child Care and Protection Board proceeds to observe that, when taking account of the best interests of the child, it is undesirable that a juvenile judge issues a supervision order and hence authorizes compulsory support which is provided in the Netherlands, while at the same time the migration judge confirms that the child may be expelled. The Child Care and Protection Board holds that children should not live in uncertainty and that their prospects should at all times be clear to them, be it in the Netherlands or in the country of origin.<sup>93</sup> However, on 30 July 2019, the new State Secretary of Justice and Security decided that children for whom the juvenile judge has sanctioned a child protection measure can be granted a residence permit on humanitarian grounds (see ante, section 5.6 for the discretionary power of the State Secretary of Justice and Security).<sup>94</sup>

Currently, the Child Care and Protection Board, the IND, and the DT&V are jointly running a pilot whereby they consider the individual cases of minors, who are in a procedure with the Child Care and Protection Board as well as with IND or DT&V, are discussed. These cases primarily consist of migrant and refugee children from families with parental problems, who are being assessed by the Child Care and Protection Board or who have already been placed under supervision. The goal of the co-operation is to better judge the interests of the child within asylum procedures.

The Child Care and Protection Board stated that initially, the IND generally consulted them on how they could weigh the interests of the child, but the co-operation also works the other way around. The Child Care and Protection Board said that they too wish to better understand the situation of a child within the asylum procedure, so that they can consider this in their own assessment: "All three organizations fall under the Ministry of Security and Justice. We try to find a solution together."<sup>95</sup>

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<sup>92</sup> Statement of the Council for Child Protection: 'The Council for Child Protection in migration law', 13 September 2018. Available (in Dutch) at: <https://www.kinderbescherming.nl/actueel/nieuws/2018/09/13/de-raad-voor-de-kinderbescherming-in-het-vreemdelingenrecht> [accessed 16 August 2019].

<sup>93</sup> Ibid.

<sup>94</sup> See State Secretary of Justice and Security The Netherlands (Staatssecretaris van Justitie en Veiligheid), Kamerbrief over humanitaire vergunningen ['Letter to Parliament concerning humanitarian permits'] (30 July 2019). Available (in Dutch) at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/30/tk-tijdelijk-humanitaire-vergunningen> [accessed 15 August 2019].

<sup>95</sup> Interview with the Child Care and Protection Board, 5 February 2019.

The interviewees from the Child Care and Protection Board describe the conflicting viewpoints that the three co-operating organizations try to deal with: “It is strange if a juvenile judge places a child under supervision because they are seriously threatened in their development while, on the same day, the immigration judge says, “excellent decision by IND. The family has to leave the Netherlands within 28 days”. How do these relate to each other?”<sup>96</sup>

The interviewees from the Child Care and Protection Board illustrate the current handling of such cases in the pilot scheme with the story of a vulnerable Algerian child who was about to be returned from a family location. The Board stated that previously, they would have requested temporary supervision after which the forced return would either proceed or be halted. However, during the pilot, the Board discussed the case in a meeting with the DT&V, who on account of this decided to suspend the forced return. This allowed the Board to investigate the needs of the family and thereafter to devise goals that could also be achieved in the country of origin. There are certain targets and standards that should be met during the period a child is under supervision. Subsequently, a review is carried out to decide if these standards can be achieved in the country of origin. For example, a child’s overseer might conclude that, because of particular problems with the child, they cannot be placed in an orphanage, but instead be put in the care of a foster family. If for whatever reason there are no foster families available in the country of origin, the Child Care and Protection Board would argue that the child cannot be returned.

The interviewees from the Child Care and Protection Board explained that they cannot say anything about the country of origin: “That is not our responsibility, but we think that those are the goals of the supervision. That is necessary for a child [...] But we do not set the conditions for return.”<sup>97</sup>

According to the interviewees, the main advantage of this pilot scheme is that it can potentially shorten procedures, which may well be in the child’s interests, as the insecurity of their situation can correspondingly be reduced. Lengthy and delayed procedures can severely threaten the child’s development, the Board argues: “We need to think about sustainable prospects for this group at an early stage of the process.”<sup>98</sup>

### 3.7 Accomodation for unaccompanied children

While the COA houses accompanied as well as unaccompanied children, the interviewee from the COA is a location manager of a reception centre for male unaccompanied minors. He explained that the housing arrangements for unaccompanied minors are arranged in the Netherlands:

*“After minors receive a rejection of their asylum application, or if the decision is still pending, they live with COA and move to small housing facilities. Small housing facilities have up to twenty beds [...]. Minors can start living at the small housing facilities from the age of fourteen,*

<sup>96</sup> Interview with the Child Care and Protection Board, 5 February 2019.

<sup>97</sup> Interview with the Child Care and Protection Board, 5 February 2019.

<sup>98</sup> Interview with the Child Care and Protection Board, 5 February 2019.



*which is exceptional. The majority are fifteen to eighteen years old. When they are fifteen, they remain for three years. When they are seventeen and a half, they stay for half a year.”<sup>99</sup>*

– COA Location Manager

All unaccompanied minors who stay in COA reception centres fall under the guardianship of Nidos, which attempts to place minors of up to fifteen years of age with foster families instead of with the COA.

Unaccompanied minors whose asylum application has been rejected have a right to reception in the Netherlands as long they are minors and their return has not yet been arranged. What happens with an unaccompanied minor upon them turning eighteen years old depends on which stage their claim is at in the asylum procedure. The Netherlands forcibly returns unaccompanied minors if there is adequate shelter in the country of origin, whereat they are placed in an orphanage or returned to their family. Depending on their circumstances, their point in the procedure and their right to shelter, minors turning eighteen are transferred to regular reception centres. An interviewee from the COA stated that they “try to keep them in the [COA] reception centre [...], so that they can keep in touch with their network, and so that schooling can continue.”<sup>100</sup>

The location manager also stressed that the COA attempts to discuss with the unaccompanied minor their options when the asylum application has been rejected, before they turn eighteen

<sup>99</sup> Interview with the COA, 25 February 2019.

<sup>100</sup> Interview with the COA, 25 February 2019.

and lose their right to shelter. The COA, Nidos, and the Repatriation and Departure Service are in regular contact with the unaccompanied minor for what they term conversations about the future, during which the minor is asked questions on what they plan to do after they turn eighteen and what possibilities are open to them. They also openly question the minor about illegality and return, such as, “Are you considering illegal stay in the country? Are you planning to return? Are the necessary travel documents in place so that you can be forcibly returned? Are you still in the procedure and are you planning to stay in the COA reception centre?”<sup>101</sup>

### 3.8 Returns of unaccompanied children

In the Netherlands, unaccompanied children can be (forcefully) returned if the Government is of the opinion that there is adequate reception available in the country of origin. According to Dutch policy, adequate reception may include parents, family members up to the fourth degree, institutionalized care and – if facts and circumstances so indicate – another family member (beyond the fourth degree), or a non-family adult.<sup>102</sup>

In the legislation *Vreemdelingencirculaire* (Aliens Circular), adequate care varies by country. For the most ‘popular’ countries, a country-specific asylum policy has been made. This policy can be altered according to the changing circumstances in the country.

The Dutch Aliens Circular 2000 (B), B8/6 describes adequate institutionalized care as follows:

“A reception facility is adequate in the case it can offer the minor at least, according to local standards:

- Reception until the minor turns 18 years, unless the reception is meant to cover a shorter period after which the minor can be taken care of by his/her own family or another that can offer adequate care
- Provision of food, clothing and hygiene
- Access to education; and
- Presence of medical care”

The DT&V carries out its own assessment on the adequacy of care available in the country of origin/return. There is a dedicated return division for this within the DT&V (staffed by specialized case managers), which operates as part of the International Affairs department. Once the DT&V decides that adequate care is or is not available, the country-specific asylum policy has to be changed accordingly to make the forced return of unaccompanied children possible or not possible. The special return division visits the country concerned and assesses care facilities. The assessment of adequate care in countries of origin/return in order to enable the return of unaccompanied children is often performed on an individual basis, or otherwise on a “meet the needs” basis. The DT&V contacts the local childcare authorities to arrange for the reception of the child, and the DT&V directly assesses the conditions at the local facilities. If the country-

<sup>101</sup> Interview with the COA, 25 February 2019.

<sup>102</sup> Aliens Circular 2000 (B), B8/6.1. Available (in Dutch) at: <https://wetten.overheid.nl/BWBR0012289/2019-08-01> [accessed 29 August 2019].





specific asylum policy states that there is adequate care in the country of origin/return, the DT&V is not required to carry out an individual assessment of the reception facilities.

The DT&V believes that the requirement for adequate care in the country of origin/return is upholding the principle of the best interests of the child.

Country of Origin Information reports (COI; in Dutch, Algemeen Ambtsbericht) by the Ministry of Foreign Affairs are important for investigating whether or not adequate reception is available in a country. It is worth noting here that these country reports lack child-specific information. For this reason, UNICEF The Netherlands has begun to develop 'child notices'.<sup>103</sup> The child notices contain child-specific information on countries of origin and identify child-specific grounds for persecution. The child notices are intended as a source of knowledge on the country of origin of a child, to be consulted prior to a decision being taken on the application for a residence permit.

According to Dutch law, the government is typically not obliged to examine at an individual level the de facto conditions in a particular place and at a particular time if an unaccompanied child is to be returned to the country of origin.<sup>104</sup> For this reason, among others, there is some debate about the definition of 'adequate reception' in the Netherlands.<sup>105</sup>

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<sup>103</sup> UN Children's Fund (UNICEF), Child Notice Afghanistan 2013 (January 2013), available at: <https://www.refworld.org/docid/5124c09e2.html> [accessed 11 August 2019]. Since this first Child Notice, UNICEF The Netherlands has written and revised several more.

<sup>104</sup> Margrite Kalverboer, Janneke Faber, and Elianne Zijlstra, *Ama's, pleeggezinnen en besluitvorming: het ontwikkelingsbelang van jonge ama's bij snelle besluitvorming rond het toekennen van een verblijfsrecht* ['Unaccompanied minor asylum seekers' foster families and decision-making: the developmental interests of young unaccompanied asylum seekers in rapid decision-making in relation to granting a right of residence'], (Amsterdam: Uitgeverij SWP, 2008), p. 12.

<sup>105</sup> Netherlands' Ombudsman for Children (De Kinderombudsman), 'Advies herijking AMV beleid' ['Advice for Review of AMV [alleenstaande minderjarige vreemdelingen – unaccompanied minor aliens] Policy'], July 2012, available (in Dutch) at: <https://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2012KOM6A%20herijkingvanhetamvbeleid.pdf>, p. 3 [accessed 13 August 2019].



### 3.8.1 Family reunification

Return to adequate care facilities is, according to the DT&V, more a theoretical than practical consideration, as most unaccompanied children can be and are returned to their families. In some cases, family members may arrive suddenly at the airport, without giving prior notification to the DT&V. In such cases, the KMar (Koninklijke Marechaussee, military border police) verify the identity of the family upon their arrival at the airport of the country of origin and write an official report, but no complete family assessment can be done on the spot. According to the DT&V, if the unaccompanied child agrees to co-operate with their return, they generally also co-operate in the process of restoring contact with their parents. In cases where family tracing is required, the unaccompanied child, together with Nidos, will contact the IOM (or alternatively the Red Cross). If necessary, the DT&V can also assist by contacting the Ministry of Foreign Affairs or other relevant parties. In cases of voluntary returns, the DT&V provides advice but the child and Nidos take the lead. The guardian will also organize the “warm” transfer of the child to the family. Reception by the family is considered adequate care, unless the unaccompanied child has announced as part of the asylum assessment that this is not the case.

In cases where the unaccompanied child and Nidos are not co-operating, the DT&V will seek adequate care, including family in the fourth degree. With the assistance of partner organizations (including the Ministry of Foreign Affairs and local NGOs), the DT&V will try to trace the family. When the family is located, the contacts are made. If all information is verified, the DT&V’s “Special Return” department will manage the transfer and accompany the child to the country of origin to ensure that transfer is performed according to the agreements made and that the child is placed in the correct care. This mainly involves the verification of the required documents. No proper family assessment is conducted. In cases of an unaccompanied child who has been refused entry at the Dutch border, the KMar will accompany the returnee and verify the correctness of documents before transferring them, as well as confirm the identity of persons involved, based on input from Nidos.

When the IOM is involved (only in cases of voluntary return), they carry out the family assessment in order for family reunification to take place. The family assessment focuses on confirming that the income of the family is sufficient to support the child, and seeking the agreement of the family to accept the return of the child. They also ensure that the living conditions are adequate for return. There is however no assessment of child welfare or of the safeness of the family environment. According to the IOM, the family assessment should be carried out by social organizations. On the basis of the family assessment, Nidos decides if family reunification can take place.

According to Defence for Children, the failure of the Dutch government to conduct a proper family assessment prior to returning an unaccompanied child is not in conformity with Article 6 (2) of the CRC, i.e. the obligation of the State to ensure the survival and development of a child to the maximum extent possible.<sup>106</sup>

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<sup>106</sup> Jantine Walst and Martine Goeman, *Durable Solutions for separated children in Europe. National Report: The Netherlands* (Leiden: Defence for Children’ 2015). Available at: <https://www.defenceforchildren.nl/media/1774/durable-solutions-for-separated-children-in-europe-national-report-the-netherlands.pdf> [accessed 16 August 2019]. See also UN High Commissioner for Refugees (UNHCR), *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997), p. 14. Available at: <https://www.refworld.org/docid/3ae6b3360.html> [accessed 16 August 2019].

### 3.8.2 Reception houses

In case children are not granted a residence permit and their family members cannot be found, the Dutch government has financed reception houses (also referred to as orphanages) for unaccompanied children in Angola, Congo, and Sierra Leone, so that the government may still expel unaccompanied children to these countries.<sup>107</sup> The government examined this possibility for Afghanistan as well, but this project was unsuccessful because the Afghan government were uncooperative.<sup>108</sup> The Dutch government holds that a reception facility is 'adequate' if it meets local standards in the country of origin.<sup>109</sup> Contrastingly, the UNHCR and Nidos do not consider return to a reception facility to be a durable solution, as sufficient guarantees are lacking. Nidos, moreover, states that they do not believe that growing up in an orphanage is ever in the interests of the child's development.<sup>110</sup> UNICEF points to the fact that "the establishment of general 'adequate reception' conditions (that is, a reception centre is in place and considered safe for return) would lead to the (theoretical) assumption that no child has a reason to remain in the country of destination."<sup>111</sup> In its Concluding Observations (fourth periodic report) on the Netherlands, the Committee on the Rights of the Child also expresses its concerns about possible returns of vulnerable children to these orphanages in their country of origin.<sup>112</sup>

### 3.8.3 The role of the guardian

To smooth the possible return of an unaccompanied minor, the interviewees at Nidos explain that, as of 2016-2017, they try to contact family members of an unaccompanied child upon their arrival in the Netherlands, in attempting to secure a so-called Double Commitment. Double Commitment refers to a commitment to return from both the unaccompanied child and the (extended) family member(s) in the country of origin. This approach is also used in Ireland.

In practice, this entails Nidos contacting family members and notifying them that their child has arrived in the Netherlands and is applying for asylum. They will also inform the family that their child has been assigned a guardian, and that they can always contact Nidos with questions. The guardians remain in contact with family members. Interviewees from Nidos explained that the reasoning behind the commitment is two-fold. Firstly, it is to prevent children becoming entangled in a fabricated account of their flight. Secondly, it is to ensure that parents are aware that an asylum claim might not be approved. With this approach, Nidos noticed that parents better comprehend the returns procedure and are more inclined to accept it.<sup>113</sup>

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<sup>107</sup> Defence for Children - ECPAT The Netherlands and UNICEF The Netherlands, 'Position paper on the return of separated children to reception houses in countries of origin' (22 April 2010), p. 2. Available at: [http://lastradainternational.org/lsidocs/DCI\\_Separated\\_children.pdf](http://lastradainternational.org/lsidocs/DCI_Separated_children.pdf) [accessed 16 August 2019].

<sup>108</sup> UNICEF (principal author Jan Murk, UNICEF The Netherlands), 'Children's rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family' (2015), pp. 28-29. Available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/childrens\\_rights\\_in\\_return\\_policy\\_and\\_practice\\_in\\_europe.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/childrens_rights_in_return_policy_and_practice_in_europe.pdf) [accessed 16 August 2019].

<sup>109</sup> Aliens Circular (B), B8/6.1. See also: ABRvS ECLI:NL:RVS:2012:BW0003, 19 maart [March] 2012, para. 2.2.1 (published 27 March 2012). Available (in Dutch) at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2012:BW0003> [16 August 2019].

<sup>110</sup> Stichting Nidos, 'Vision on return', full text, p. 15. A short version is available in Dutch at <https://www.nidos.nl/home/missie-en-visie-van-nidos/visie-van-nidos-op-terugkeer/>.

<sup>111</sup> UNICEF, 'Children's rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family', p. 37.

<sup>112</sup> UNCRC, Concluding Observations on the fourth periodic report of the Netherlands, p. 12.

<sup>113</sup> Interview with Nidos, 5 February 2019.

An interviewee from Nidos stressed that commitment from the (extended) family is necessary to jointly create a plan for the child's future. Collaboration with families offers opportunities to shape the prospects of a minor in the country of origin while they are still in the Netherlands; for example, by following a focused training course. If there is no family available, or if the family cannot offer sufficient safety, Nidos seeks collaboration with organizations in the countries of origin in order to locate the family or search for alternative family care, verify information, find training and work options, and to organize a possible guardian transfer and monitoring. Nidos also co-operates with chain partners, such as the DT&V and IOM, to support returns.

#### 3.8.4 Returns of unaccompanied children upon their reaching 18 years of age

A pressing issue is the position of children who are about to turn or have just turned 18 years of age. The requirements for the return of unaccompanied children, such as the need for adequate reception, no longer exist as of the eighteenth birthday of an unaccompanied child, despite these (in a strict sense former) children not suddenly ceasing to be vulnerable or becoming strong-minded and independent. In the case of Afghan boys, for instance, this strict distinction is particularly severe, not least because Afghan boys of 18 or 19 years old may run a great risk of being recruited by the Taliban.<sup>114</sup> In the Netherlands, it is not uncommon for unaccompanied children to be arrested and detained with a view to forced return shortly after or even just prior to their eighteenth birthday.

Afghan unaccompanied minors who are about to turn eighteen currently form a substantial group confronted with (the possibility of) forced return to Afghanistan. An immigration lawyer explains:

*"The threat of forced return is common, especially with Afghan cases. The Afghan embassy is currently co-operating, so the threat of actual return is real as soon as they turn eighteen years old. Then you actually face forced return. [...] I find it crude, because the policy in the Netherlands does not reflect the situation in Afghanistan on various levels. Both the safety situation and the situation of the Hazaras [an ethnic group native to the barren, mountainous region of Hazarajat, central Afghanistan, who have long been isolated and persecuted]; then you are extra vulnerable in Afghanistan. We now pretend that families with young children are mainly at risk. But I am worried about these young men that return who no longer have ties with their families because of sexual violence or conversion. They do not have a safety net. Why are they not considered to be extra vulnerable? I think they are vulnerable, because they have also reached the age at which it is expected of them to show traditional values. When they do not, they can really be questioned about that."*<sup>115</sup>

– Immigration lawyer

This immigration lawyer dealt with a case of an Afghan boy who was returned to Afghanistan. The lawyer explains:

<sup>114</sup> See, for example, Save the Children, *From Europe to Afghanistan. Experiences of Child Returnees*, p. 35.

<sup>115</sup> Interview with an immigration lawyer, 26 February 2019.

*"It is a complex case. I am in quite regular contact with a boy who has been returned to Afghanistan and is currently in Iran. The case is complex because the boy was put in psychiatric confinement in the Netherlands because of a suicide risk. Eventually he said that he would go back [to Afghanistan] and commit suicide there. So now he mails me, every now and then, that he is about to die and later that he is still there. In this way, we are in contact from a distance. [...] It was voluntary return. [...] The consul of the Afghan embassy even told the Repatriation and Departure Service, "look at this boy. We don't have any hope." [...] Initially, he was to be forcibly returned. This allowed the contact person of the Repatriation and Departure Service to arrange some things in Afghanistan, such as an organization that would await him upon arrival. The forced return was cancelled right before it was due to happen because he was put in psychiatric confinement. When the boy announced he would voluntarily return to Afghanistan, DT&V would not arrange things for him again, as they had done so before and no use was made of these arrangements. [...] This boy was eighteen. He dealt with return since he was seventeen."*<sup>116</sup>

– Immigration lawyer

Almost all of the interviewees find it worrisome that Afghan boys are threatened with detention and forced return as soon as their eighteenth birthday approaches.

One case that shocked several interviewees concerned two Afghan brothers who were expelled to Kabul just after the eldest brother turned eighteen. According to the State Secretary of Justice and Security, the eldest brother could provide the adequate reception for his younger brother, who was still a child. The brothers' other family members could not be traced in Afghanistan, as this was deemed too dangerous by the Red Cross. Nidos opposed this forced return because, *inter alia*, the elder brother was examined and was found to be experiencing significant psychological distress. He was not, therefore, deemed Nidos, able to care for his younger brother. Despite significant criticism of the decision, the forced return was carried out.<sup>117</sup> An interviewee from Nidos remarked: "His brother turned eighteen, so DT&V considered that adequate care. They stated they could return the boys. It happened behind our back."<sup>118</sup>

Another interviewee recalled this case:

*"We had two brothers that were fifteen and seventeen when they came in. When the oldest turned eighteen they were forcibly returned about two or three weeks after his birthday. Scandalous."*<sup>119</sup>

– Interviewee Nidos

<sup>116</sup> Interview with an immigration lawyer, 26 February 2019.

<sup>117</sup> The same case, which is considered an illustrative example, is also described in Amnesty International, *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek*, p. 27. See also Stichting Pharos, *Bewogen Terugkeer*, Phaxx no. 3, 2011, p. 37.

<sup>118</sup> Interview with Nidos, 5 February 2019.

<sup>119</sup> Interview with Dutch Council for Refugees, 6 February 2019.

Although interviewees thus recollect cases of the return of unaccompanied Afghan minors, most boys turn to illegality in the weeks prior to turning eighteen. The location manager of the COA mentions that some boys leave without further ado: “They give you the key and shake your hand.”<sup>120</sup>

### 3.9 Detention

In the Netherlands, vulnerable people, including children, are not excluded from immigration-related detention.<sup>121</sup>

#### Types of migration detention

Previously, there were two types of immigration-related detention for children. These were border detention, upon arrival at the airport, and immigration-related detention prior to forced return. The first type of border detention was abolished for children, both unaccompanied and in families. Instead, a screening takes place at the airport – for instance, to assess the veracity of the family ties – after which children and their parents are transferred to an open location (in Ter Apel) to await their asylum procedure. Nevertheless, in September 2019, the State Secretary of Justice and Security announced a change of the Aliens Circular with regard to border detention of unaccompanied children. After implementing this policy change, it will become possible to place an unaccompanied child<sup>122</sup> in the closed family facility<sup>123</sup>.

However, despite its abolishment, in practice accompanied children still were placed in border detention in recent years (20 children 2017 and 10 children 2018).<sup>124</sup>

The second type of detention, enacted prior to forced return, is still frequently imposed on both children within families and unaccompanied children. The State Secretary of Justice and Security is entitled to impose migration detention.<sup>125</sup> According to the Aliens Circular, the maximum term for this detention in principle is 14 days.<sup>126</sup> In the Netherlands, the decision to enforce migration detention is made by civil servants from the DT&V. This decision is based on the law<sup>127</sup>, but is not reviewed by a judge prior to detention. This means that the decision is effectively the outcome of an assessment by the DT&V, who evaluate the risk of abscondment. The DT&V officials must assess whether the situation is such that imprisonment is lawful. The Dutch Children’s Ombudsman questions whether the assessment is carried out with sufficient care in some cases.<sup>128</sup> Previously, the general prosecutor was responsible for the decision regarding detention. However, over the years this responsibility has gradually shifted from the

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<sup>120</sup> Interview with COA, 25 February 2019.

<sup>121</sup> See: Amnesty International, Dokters van de Wereld, and Stichting LOS, ‘Opsluiten of Beschermen? Kwetsbare mensen en vreemdelingendetentie’ [‘Locking up or protecting?: Vulnerable people and the detention of Aliens’] (April 2016). Available (in Dutch) at: [http://stichtinglos.nl/sites/default/files/los/AMN\\_16\\_20\\_kwetsbaar%20in%20vreemdelingendetentie\\_WEB\\_300dpi.pdf](http://stichtinglos.nl/sites/default/files/los/AMN_16_20_kwetsbaar%20in%20vreemdelingendetentie_WEB_300dpi.pdf) [accessed 16 August 2019].

<sup>122</sup> This concerned children whom the authorities encountered for the first time and whose departure can in principle be realized within four weeks at the latest.

<sup>123</sup> The reason for this policy change is that a substantial part of the unaccompanied minors disappear from the reception centres.

<sup>124</sup> The accompanied children who have been placed in border detention in line with Art. 6 of the Aliens Act. These children all arrived, with their families, at Eindhoven airport, where no adequate family rooms are available.

<sup>125</sup> Aliens Act, Art. 59.

<sup>126</sup> Aliens Circular (A), A5/2.4.

<sup>127</sup> Measure executing Article 50 of the Dutch Aliens Act 2000.

<sup>128</sup> See Netherlands’ Ombudsman for Children, ‘In Pyjama naar buiten’ [‘Going outside in pyjamas’] (16 June 2017) Available (in Dutch) at: <https://www.dekinderombudsman.nl/nieuws/rapport-in-pyjama-naar-buiten?id=741> [accessed 16 August 2019].





prosecutor to the DT&V. This development has repeatedly been criticized by the Dutch NGO coalition 'Geen Kind in de Cel' ('No child in a prison cell').<sup>129</sup>

#### **Detention of accompanied and unaccompanied children**

Five years ago, a temporary (near) abolishment of migration detention in the Netherlands was in place. In September 2013, the Secretary of State announced that families with children would no longer be detained to accomplish their forced return, unless they had previously absconded. The Secretary of State corroborated this decision by pointing to the policy in other countries, such as Belgium.<sup>130</sup> However, with the opening of the Closed Family Location in 2014, the Secretary of State quickly overturned his own policy change, announcing that he would reintroduce the possibility of detaining children who (or whose parents) had not previously absconded.<sup>131</sup>

The Closed Family Location in Zeist (Utrecht province), a detention facility within the premises of a larger detention centre, was opened in October 2014. This location was created for the detention of: 1) families with children according to Article 59, the Aliens Act, i.e. families who are to be expelled; 2) families with children who were refused at the border, have applied for asylum, and are awaiting the decision in detention (in practice, this no longer occurs, as all families are allowed transfer to an open location after the screening at the airport); and 3) unaccompanied children who have been taken into custody awaiting their forced return. The Closed Family Location is, in a material sense, more child-friendly than the cells previously used to detain (families with) children.

<sup>129</sup> After a successful pilot, the State Secretary of Justice and Security decided to structurally change the policy. See their letter to Parliament, Inbewaringstelling door de Dienst Terugkeer en Vertrek ['Detention order by the Repatriation and Departure Service'] (30 January 2018), available (in Dutch) at: [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2018Z01408&-did=2018D02840](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z01408&-did=2018D02840) [accessed 16 January 2019].

<sup>130</sup> Kamerstukken II 2012/13, 19 637, no. 1721, p. 15.

<sup>131</sup> Kamerstukken II 2014/15 19637, nr. 1896, letter of the State Secretary of Justice, 26 September 2014.

According to the State Secretary of Justice and Security, detention of children is applied as a last resort. Families with children, as well as unaccompanied children, are first accommodated in open centres. When the asylum procedure has ended and forced return is awaited, families with children are accommodated in Open Family Locations (*Gezinslocaties*). In these locations their freedom is limited, as they are not permitted, in principle, to leave the municipality in which the location is situated. Moreover, all adult family members must report to the authorities daily, except on Sundays.

The State Secretary of Justice and Security further declares that detention can only be enforced when less coercive measures cannot be applied in an effective way, and when there is a real risk of absconding or frustration of the forced return by the third-country national. In accordance with Dutch policy, extra attention must be paid to the possibility of using less coercive measures.<sup>132</sup>

### Decision and appeal

Since 2014, the DT&V, the organization authorized to make decisions about the detention of children and families, has held that there is an inherent risk of absconding from certain families or one of their members. In practice, this implies that every family that fails to return voluntarily is considered at risk of absconding. Generally, therefore, the forced returns process automatically includes detention.

The decision to detain a child or family must be made while taking account of the individual circumstances of the case. This must be extensively motivated. Besides the general requirements that apply to every case of migration detention, such as illegal entry or the failure to co-operate with the determination of one's identity,<sup>133</sup> the medical background, the age of child(ren) and, in the case of families, the composition (integrity) of the family unit is taken into account.<sup>134</sup>

In cases of unaccompanied children, detention is only considered applicable if there is a strong reason for so doing, namely:

- the unaccompanied child is suspected of or convicted for a criminal offence; or
- the forced return of the unaccompanied child can be arranged within a maximum of 14 days; or
- the unaccompanied child has previously absconded and did not respect the duty to report or another measure restricting their freedom of movement.

Both unaccompanied children and children in families must be placed in the Closed Family Location in Zeist within five days following their apprehension.

It is possible to appeal against the decision to impose detention on a family with children or an unaccompanied child. In most cases, this appeal is made, and the court assesses the legality of the detention. It should be noted that this assessment is often carried out some time after the detention decision has been taken. This means that the children have been in detention for a few days. Sometimes, the appeal against detention is only processed after a family has already

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<sup>132</sup> Ibid.

<sup>133</sup> For all requirements for migration detention with a view to forced return, see Aliens Decree, Arts. 5.1a, 5.1b, and 5.1c.

<sup>134</sup> Letter of the State Secretary of Justice and Security to Parliament, 20 March 2018 (Brief van de Staatssecretaris van Justitie en Veiligheid, vergaderjaar 2017-2018, 19 637, nr. 2372 (20 maart 2018)), available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-2372.html> [accessed 29 August 2019].

been expelled. In these cases, all that remains to be resolved is possible compensation should the judge deem that the detention was unlawful. In some situations, there may also be an appeal against the lengthening of a detention. For example, this may be applicable when a family/child submits a new asylum application while in detention. The policy then offers the possibility of longer detention to treat the asylum application made while in detention. In the case of children, this can mean that the period of fourteen days (the maximum time allowable for detention in the Netherlands) is exceeded. The option of prolonged detention is pursuant to Article 59b of the Dutch Aliens Act 2000. Apart from the appeal proceedings against the detention, there may be a procedure on the legality of the expulsion, often in relation to a pending residence process. In this process, the court may prohibit an expulsion. In many cases, this leads to release from the detention centre, since a family has then held lawful residence for some time. However, the lawfulness of the detention measure is not addressed during that process.

### Duration of detention

On average, families with children are detained for seven days, half of the maximum term. In cases of the detention of a family or an unaccompanied child, the authorities have typically already arranged everything with respect to the actual forced return, such as the (temporary) travel documents and flight tickets. The duration of the detention of families with children can be extended beyond 14 days, but only when the forced return cannot be arranged because of physical resistance by (one of) the family members, or because (one of) the family members has begun one or more migration procedures while there is no reason that this procedure should have started at an earlier stage.<sup>135</sup>

In 2018, according to information from the Dutch government, the average period in detention for unaccompanied children was 21 days. Parliamentarians have asked the State Secretary of Justice and Security how this is possible when the maximum term in principle is 14 days. In a letter to Parliament, the State Secretary of Justice and Security reiterated that the period in detention for both accompanied and unaccompanied children should be as short as possible, but the return of unaccompanied children must still be organized with maximum accuracy. Adequate reception in the country of origin should be in place. This can sometimes influence the duration of the detention. In 2017 and 2018 this was the case, because a large number of the unaccompanied children detained in the Closed Family Location during these years had been arrested, for instance while trying to reach the United Kingdom. In such cases the return can only be prepared once the child has been detained, whereas in other situations, such preparations for the return have already begun while the child is still in a reception centre.<sup>136</sup>

### Fear of detention

The prospect of detention is considered truly alarming by most rejected asylum seekers. An immigration lawyer describes this anxiety:

*“What I hear from unaccompanied minors, but most definitely also from families, is that they fear being suddenly taken by the police at five o’clock in the morning. I’m currently*

<sup>135</sup> Aliens Circular (A), A5/2.4. See also Aliens Act, Art. 59b.

<sup>136</sup> Letter of State Secretary of Justice and Security to Parliament, 22 February 2019 (Brief van de Staatssecretaris van Justitie en Veiligheid, vergaderjaar 2018-2019, 19 637, nr. 2473 (22 februari 2019)). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-2473.html> [accessed 29 August 2019].

*assisting a family with their subsequent asylum application. They told me that they have been leaving their reception centre at four o'clock in the morning for the last month, and they stay on the streets until eight o'clock in the evening. That is the period during which the police can come. These people just roam the streets every day with two young children in order to avoid forced return."*

– Immigration lawyer

The children of this family were four and six years old. Their immigration lawyer informed the family that they did not have to fear forced return, as they did not have any documents, and without these, their country of origin will not co-operate with forced return. Yet, this and other accounts of asylum seekers leaving reception centres to avoid apprehension (e.g. of Afghan boys in the weeks prior to their eighteenth birthday) illustrate the widespread fear of detention and that which follows forced return. The fear of detention and forced return is heightened for people from Afghanistan, as there is an agreement in place between the European Union and Afghanistan that includes an obligation for the Afghan authorities to accept a number of nationals who are no longer in an asylum procedure. Eritreans with a Dublin claim for Switzerland are also vulnerable, as Switzerland is currently returning asylum seekers to Eritrea.

#### Detention procedure in practice

The arrest of a family with children is performed by officers of the Transport and Support Service (*Dienst Vervoer en Ondersteuning (DV&O)*). The police are always present at the family location at the time of arrest, as they are responsible for the authorization to enter the home of the family. Following the arrest, the DV&O is responsible for transport to the Closed Family Location in Zeist, where the family is officially taken into custody by a qualified officer from the DT&V. Every arrest is extensively prepared for by the services involved. In principle, all cases for arrest are discussed in the national return consultation. Arrests of families generally take place early in the morning, at no later than 7 am. The staff members of the Transport and Support Service and the police are in uniform. NGOs have repeatedly criticized the practice of early morning arrests by uniformed personnel, as this causes children additional stress. In June 2018, a motion was accepted in Parliament urging the government to investigate the possibilities of improving this practice.<sup>137</sup> In reaction to this motion, the State Secretary of Justice and Security informed Parliament that they consider the approach of early morning arrests by uniformed personnel necessary for assuring a safe performance of the task by the Transport and Support Service. The timing of the arrests is also considered necessary by the State Secretary of Justice and Security so that the children are most probably present at the location and that no arrests need be made in schools.<sup>138</sup>

Employees of the Transport and Support Service indicate that families who are to be arrested for transportation to the Closed Family Location in Zeist are always aware of the fact that their

<sup>137</sup> 'Motie van het lid Voordewind C.S.' ['Motion of the member Voordewind C.S.'] Tweede Kamer 2017-2018, 19 637, no. 2409 (29 June 2018). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-2409.html> [Accessed 20 August 2019].

<sup>138</sup> Letter of the State Secretary of Justice and Security to Parliament, 14 November 2018 (Brief van de Staatssecretaris van Justitie en Veiligheid, vergaderjaar 2018-2019, 19 637, nr. 2441 (14 november 2018)). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-2441.html> [accessed 29 August 2019].

apprehension is impending, because they are no longer in a procedure (*uitgeprocedeerd*). Several lawyers, however, mention cases in which families were still awaiting a decision on a request for delay of return on medical grounds (*uitstel van vertrek op medische gronden op grond van artikel 64 Vreemdelingenwet*), yet were nevertheless arrested and transported to the Closed Family Location in Zeist. The decision to decline the request was passed to them after they had arrived in Zeist. Hence, they were staying in the family location under the assumption that they were still awaiting the decision on their request for delayed return, and that they could not therefore be expelled at that time.<sup>139</sup> In such situations, an appeal becomes even more difficult, as the family is already detained and their forced return is imminent. Due to the arrest and detention, the time pressure on the family and their lawyer increases significantly.

Those who are detained in order to return to their country of origin or a third country under force receive no prior notification of detention. This is meant to diminish the risk that people will not be at the expected location. No exemptions to this procedure are made for the detention of children and their families.

An interviewee from the Transport and Support Service explained how this unannounced, early-morning detention works in practice:

*"We always deal with families in the early morning. Always from Monday to Friday, never at the weekend. The morning hours primarily relate to children who might go to school. We do not want to take them from a classroom. We want to operate at a quiet hour, before the daily life at a COA shelter starts – so, before people wake up. The moment that a reception centre wakes up, we want to be already gone. This is also aimed at keeping peace and order at such a centre. [...] To prevent the formation of groups. We preventively try to deescalate."*

– Interviewee Transport and Support Service

People, including families, are generally informed of their detention upon the Transport and Support Service's arrival at a location. "Families get some time to gather some stuff and then we leave as soon as possible", the interviewee explained.

The Transport and Support Service underlines that they always try to transport family members together, but that this cannot always happen:

*"Unfortunately, sometimes it happens that we need to separate a family member. We always bear this in mind beforehand, and thus come with an extra vehicle. Often it means that we transport the father separately from the rest of the family, because otherwise it can cause problems. We try to avoid it at all times, but this is not always possible."*

– Interviewee Transport and Support Service

<sup>139</sup> This accords with the experiences of the Children's Rights Helpdesk at Defence for Children.



The employees of the Transport and Support Service always wear uniforms as a preventative measure. The interviewee explained why:

*“This [wearing of a uniform] has a preventive effect. Of course, emotions and so on arise. [...] The uniform gives the signal: this is the end of the line. You will come with us. It is the ultimate means that we do not want to use within the Netherlands. We don’t want detention; we of course just want to have people leave on a voluntary basis. But that has been tried and did not succeed, so subsequently you have this ultimate means which is arresting a person and detaining him.”*

– Interviewee Transport and Support Service

### 3.10 The new law on return and migration detention

At present, a new law on return and migration detention is being developed. Parliament has already agreed on the text. It has yet to be discussed in the Senate. The new law introduces Article 58a of the Aliens Act, which contains an obligation for the State Secretary of Justice and Security to specifically motivate a decision to detain a migrant in case of vulnerability.<sup>140</sup> However, the proposed law does not prescribe an assessment of vulnerability, and continues to take as a starting point the limited test of whether the necessary care can be provided in detention:

*“An investigation into the feasibility of detention can in fact only be performed in the context of the detention itself. After all, the core question here is whether the necessary care can be provided in the specific detention conditions at hand.” (translation provided by DCI)<sup>141</sup>*

– Memorie van Toelichting Wet Terugkeer en Vreemdelingenbewaring

The proposed law does not explicitly state those situations in which detention is acceptable as an *ultimum remedium*, neither does it oblige the Secretary of State to justify which specific, less coercive measures have been taken into account and why these were considered insufficient in a particular case. The new law does not rule out the possibility of migration detention for children. The No Child in Detention Coalition (Coalitie Geen Kind in de Cel) has pleaded unequivocally to abolish migrant detention for children, being as it is very damaging to the development of children, and has criticized the Secretary of State on the one hand stating that the best interest of the child is a primary consideration, while on the other asserting that the use of detention to assist the forced return may prevail over the child’s freedom.<sup>142</sup>

<sup>140</sup> See Memorie van Toelichting op de Wet Terugkeer en Vreemdelingenbewaring [‘Memorandum of Clarification on the Law on the Detention and Return of Aliens’], Kamerstukken II 2015-2019 34309, no. 3.

<sup>141</sup> Ibid., p. 91.

<sup>142</sup> No Child in Detention Coalition (Coalitie Geen Kind in de Cel), Letter to members of Parliament and spokespersons on migration policy (‘Geachte leden van de Tweede Kamer, woordvoerders migratiebeleid’), Amsterdam, 11 April 2019. Available (in Dutch) at: <https://meldpuntvreemdelingendetentie.nl/wp-content/uploads/brief-tbv-AO-18-april-over-onrust-DC-Rotterdam.pdf> [accessed 18 August 2019].

The new law on return and migration detention also gives the director of the detention centre the competence to impose certain coercive measures, such as the isolated detention of children twelve years of age and older. These measures can be taken without a support scheme and without the involvement of a behavioural scientist. The assignment of this competence does not agree with the action plan presented by the Minister of Health, Welfare and Sport to abolish the placement of children in isolated detention, due to of the traumatizing effect of this practice.<sup>143</sup> Moreover, the distinction between children of twelve years and older and children under twelve years of age does not accord with the prohibition of discrimination and the definition of a child in the UNCRC.<sup>144</sup>

### 3.11 Monitoring of returned children

Little is known about children who have been expelled from the Netherlands to their country of origin. The Dutch government does not monitor the situation of these children once they have been received by local authorities at the airport in the country of origin. It is clearly stipulated in Dutch policy that, in cases of the return of an unaccompanied child who is put into adequate care by the authorities in the country of origin, there is no further responsibility for the Dutch government to provide post-return care.<sup>145</sup>

On 13 October 2016, the Council of Europe passed a resolution to seek durable solutions for unaccompanied children, based on research into the best interests of the child, the right to security, protection and development, and monitoring procedures.<sup>146</sup> On 1 November 2016, a motion was introduced by the Dutch political party ChristenUnie requesting that the Dutch government provide insight into how the interests of both children in families and unaccompanied children are taken into account in return policies.<sup>147</sup> The government was also requested to commission an independent organization to perform an evaluation of the situation of children after their forced return. There was no majority for this motion on 8 November 2016.

With the exception of one immigration lawyer and Solid Road, all interviewed organizations and lawyers reported that they scarcely have any contact with families or unaccompanied minors after return. The contact between an immigration lawyer and a boy from Afghanistan was earlier described (section 6.8.4).

Nidos has an agreement with the IOM on monitoring. The IOM visits families or arranges family visits to the local IOM office. Respecting the transfer of guardianship, the interviewee from Nidos explained:

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<sup>143</sup> Ibid.

<sup>144</sup> UNCRC, Articles 1 and 2.

<sup>145</sup> Aliens Circular (A), Art. A3/6.1.

<sup>146</sup> Council of Europe: Parliamentary Assembly, Resolution 2136: Harmonising the protection of unaccompanied minors in Europe (13 October 2016). Available at: <https://www.refworld.org/docid/5800d4511482.html> [accessed 18 August 2019].

<sup>147</sup> Kamerstukken II 2016/17, 19 637, no. 2249 (2 November 2016). Available (in Dutch) at: <https://zoek.officielebekendmakingen.nl/kst-19637-2249.html> [accessed 19 August 2019].

*“We try to transfer the guardianship, but we rarely succeed in doing so. In those cases, we keep custody until a child turns eighteen while the child is in the country of origin. There has to be adequate shelter, family or a guardian. It is or, or, or. So, when there is adequate shelter, then we will not have an opinion about that because it is in line with the return directive. In those cases, transfer of the guardianship is no obligation for return.”*

– Interviewee Nidos

Transfer of guardianship has little chance of success, because of the lack of guardians in many countries of origin.

Solid Road monitors clients (including families with children) following their return. Officially, the monitoring and assistance lasts for one year after return. In Solid Road’s experience, families that have returned on a voluntary basis with their assistance contend better with their situation than families that have returned by force. Yet, the character and specifically the resilience of parents is often decisive. If parents are resilient, their children tend to cope better as well. They follow the emotions of their parents.

With specific regard to Armenian children, Solid Road recommends that returned Armenian families are monitored for two years. According to Solid Road, this is the minimum period necessary to determine if reintegration is durable. Such an extended period of monitoring might also provide insight into the circumstances that cause some returned families to consider leaving for Western Europe again.

This is an issue also touched upon by Danielle Zevulun in her study of returned migrants in Kosovo and Albania. She notes that all families in the follow-up study of her research were negative about their return, and that some of them indicated that they would return to the country in which they sought asylum, should the opportunity arise.<sup>148</sup> Zevulun considers the relevance of risk factors in a child’s life to an exacerbation of the difficulties of reintegration faced upon return. She observes that difficulties in reintegration and social-emotional problems did not diminish with time for all of the children who faced problems at an earlier stage following the forced return. Some children still encountered these difficulties some considerable time after return, and ended up living in isolation and rather out of sight. They did receive support to an extent following their repatriation, but not all of the struggles that these children encounter in different areas of their lives and at different stages of the post-return period had been sufficiently confronted.<sup>149</sup> This is of great concern in relation to the development opportunities of child returnees, and underlines the importance of adequate and thorough monitoring.

In a report on children returned to Armenia after a minimum of five years in the Netherlands, the University of Groningen and Defence for Children also stress the importance of monitoring. They state that forced removals entail a high risk to the development of children who are returned to their countries of origin. It is therefore essential to gain more insight

<sup>148</sup> Zevulun, *Repatriation and the best interests of the child: The rearing environment and wellbeing of migrant children after return to Kosovo and Albania*, p. 172.

<sup>149</sup> Ibid, pp. 168-169.



into how children are faring once they are expelled, and to identify the factors contributing to or harming their development.<sup>150</sup>

Amnesty International also highlights the deficiency of sound monitoring mechanisms:

*“The Inspectorate of Security and Justice co-ordinates the Netherlands’ National Preventative Mechanism (NPM) and is charged with (human rights) monitoring of Dutch deportations. Over the past few years, several national and international authorities have criticised the Dutch human rights monitoring system. The criticism targeted both the lack of independence and the scope of monitoring activities. The Inspectorate of Security and Justice is located in the same building as the Ministry of Security and Justice. While international human right norms are cited, the Inspectorate does not systematically operationalize these in its implementation manual.”<sup>151</sup>*

– Interviewee Amnesty International The Netherlands

Amnesty International believes that sound monitoring should continue upon arrival in the country of origin, in order to assure that the conditions under which the return took place are actually fulfilled. Such monitoring could, for instance, be carried out by an NGO, embassy personnel, or a local law firm; Amnesty International thinks that it is not so important who does the monitoring, than it is done independently and thoroughly.

<sup>150</sup> See Defence for Children, ‘Ik wil terug naar Nederland’, monitoring van teruggekeerde gewortelde kinderen in Armenië. For this research, seven families were visited in Armenia, of whom seventeen were children (eleven boys and six girls).

<sup>151</sup> See Amnesty International, ‘Deported: Human Rights in the Context of Forced Returns - Summary’ (July 2017). Available at: [https://www.amnesty.nl/content/uploads/2017/07/AMN\\_17\\_13\\_Rapport-mensenrechten-en-gedwongen-uitzetting\\_ENG-summary\\_WEB.pdf?x54531](https://www.amnesty.nl/content/uploads/2017/07/AMN_17_13_Rapport-mensenrechten-en-gedwongen-uitzetting_ENG-summary_WEB.pdf?x54531) (text quoted at p. 9) [accessed 12 August 2019].

### 3.12 Safe countries

Based on the EU Procedure Directive 2013/32/EU<sup>152</sup>, the State Secretary of Justice and Security determines which countries of origin are to be considered safe. Annex 1 of the Directive lists the conditions required to attain this status:

**Criteria for safe countries in the EU Return Directive:**

1. Democratic governance
2. Protection of the right to freedom and security of the person
3. Freedom of expression
4. Freedom of religion and association
5. Protection against discrimination and persecution by third parties
6. Access to independent investigation
7. Access to independent judges
8. Access to judicial support/means
9. No torture
10. No inhuman treatment

Countries are being checked and reassessed using a limited amount of country of origin reports (such as U.S. State Reports and reports from Freedom House).<sup>153</sup> In cases where an asylum seeker originates from one of the designated safe countries, an individual assessment is still carried out. The only difference is in the speed of the asylum procedure: track 2 (fast track) is meant for asylum seekers originating from safe countries, or who have legal residence in another EU country. The asylum procedure is then a swift and accelerated procedure, in which some of the normal steps are passed over, such as the rest and recuperation period. Asylum seekers in track 2 whose request has been rejected must leave the Netherlands immediately. They will no longer receive assistance and financial support for return to the country of origin. This also applies to asylum seekers who withdraw their application. A rejected asylum seeker from a safe country of origin will receive a 2-year ban from travelling to the Schengen area (currently comprising 26 European countries).<sup>154</sup> The fact that an asylum seeker originates from a safe country does not affect the return procedure. The safeguards for unaccompanied children (family reunification, adequate care) still apply. Migrants can seek help from the IOM for their return to their country of origin. However, asylum seekers from the Western Balkan countries no longer receive support from the IOM. This also means that they no longer receive financial assistance with, for example, arranging replacement travel documents or airline tickets. They can still rely on help from the return and departure service (DT&V).<sup>155</sup>

<sup>152</sup> See EU Directive on common procedures for granting and withdrawing international protection (recast) (2013/32/EU).

<sup>153</sup> Letter of the State Secretary of Justice and Security to Parliament, 7 December 2018.

<sup>154</sup> See 'How are asylum applications by people from safe countries dealt with?'

<sup>155</sup> Ibid.



### 3.13 Return and readmission agreements

The Return and Readmission agreements include no specific provisions for certain groups of people. The agreements contain rules and procedures for co-operation between parties to transfer people that must return.

#### **Return and readmission agreements**

The EU has return and readmission agreements with the following countries and regions:

Albania	Hong Kong	Pakistan
Armenia	Macao	Russia
Azerbaijan	Republic of North Macedonia	Serbia
Bosnia-Herzegovina	Moldova	Sri Lanka
Cape Verde	Montenegro	Turkey
Georgia	Ukraine	

#### **Return and readmission agreements for Benelux:**

Kazakhstan  
Kosovo

In terms of the co-operation, specific attention is paid to family unity and to the necessity of communicating when returnees, including families and children, have special needs that have to be looked after.

According to the State Secretary of Justice and Security, since the CRC prescribes that the best interests of the child should be a primary consideration, special attention is given to their situation, which is also the case in respect of the Return and Readmission Agreements.

Not all bilateral agreements with countries of origin, such as Memorandums of Understanding (MoUs), are published. According to the DT&V, countries of origin do not wish for them to be made public, as this reveals that these countries co-operate with forced return.



## 4 Profile of and support provided to unaccompanied and accompanied children in the Netherlands

### 4.1 Profile of and support provided to unaccompanied children

Lawyers and civil society organizations interviewed for this study identified Eritrea, Syria, and Afghanistan as the main countries of origin of unaccompanied minors in the Netherlands. Other countries of origin include Iraq and Iran, countries in West Africa (e.g. Mali, Guinea, The Gambia, Nigeria and Ivory Coast), Central Africa (The Republic of Congo and Democratic Republic of Congo), and Northern Africa (Sudan and most notably Morocco and Algeria), as well as Albania.

The great majority of these unaccompanied children are male. The interviewed location manager from the COA estimated that 95% of unaccompanied children are male, and 5% female. He explained that the ratio used to be different: “In the past, more Eritrean girls came by themselves. Nowadays, you don’t see many girls from non-Western countries undertaking the journey to the Netherlands alone.”<sup>156</sup>

Although girls form a minority within this group, interviewees who contributed the present study have provided support to female unaccompanied minors. For instance, a social-legal advisor from STIL Utrecht was at the time of this report supporting a girl from Eritrea.

Most unaccompanied minors are between the ages of fifteen and eighteen years old. Yet, younger children do arrive alone. The youngest unaccompanied minor currently being

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<sup>156</sup> Interview with COA, 25 February 2019.

supported by an organization interviewed for this study is a four-year-old child with family ties in the Netherlands who seemingly arrived alone. Immigration lawyers are also supporting a six-year-old boy, a twelve-year-old Yazidi boy who travelled from Iraq to the Netherlands with his fourteen-year-old sister, and three Afghan siblings who continued their journey to Western Europe after their parents were detained at the Greek border. According to one of the immigration lawyers, “this is a returning signal. Parents get stuck at the Greek border so their children travel on without them.”<sup>157</sup> When the influx of refugees peaked in the Netherlands in around 2015, young children arrived without their parents more regularly. Nidos noticed that, at that time, quite a number of young children, of six or seven years old, arrived in the country. Most of them came from Syria, and usually with uncles, aunts or grandparents, according to Nidos.<sup>158</sup>

A group of particular concern to many of the lawyers and civil society organizations are the Eritreans, whose applications are increasingly being rejected, often on the grounds of the Dublin Regulation.

Two years ago, unaccompanied minors from Eritrea generally received a residence permit. Nowadays, their stories are seldom believed. Both Nidos and the Dutch Council for Refugees regularly experience challenges in their work with Eritreans. Unaccompanied minors from Eritrea often struggle to understand why people with similar stories to their own were granted a residence permit in the past.

Furthermore, the large cultural differences between Eritrea and the Netherlands cause communication problems. It is necessary to repeat procedural matters, such as the importance of arranging documents, to the minors several times. It can be challenging to explain the process and the need to arrange documents to minors of any background, but especially to Eritrean minors. The Dutch Refugee Council explained that they invite Eritrean children to numerous meetings to provide them with information. Often, they invite them on a weekly basis, “in the hope that there is a moment when they realise: that is what I have to do.” The interviewee from the Dutch Refugee Council added that he sometimes uses drawings to explain the situation: “Through a picture I try to show them, this is what you have to do. We are here and you need to go there.”<sup>159</sup>

A substantial group of (primarily) Eritrean unaccompanied minors are registered in Italy and other European Union Member States as adults. When they continue their journey and apply for asylum in the Netherlands, these minors are considered adults in the Netherlands on the basis of the interstate principle of legitimate expectations (in Dutch, *interstatelijk*

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<sup>157</sup> Interview with immigration lawyer, 4 March 2019.

<sup>158</sup> Interview with Nidos, 5 February 2019. According to the definitions of the UNHCR, this group of children can be defined as separated children: “‘Unaccompanied children’ (also called ‘unaccompanied minors’) are children under 18 years of age who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so. However, recent experience has highlighted that, even in emergency situations, not all children are found to be unaccompanied as defined above, even though many have been separated from their previous legal or customary caregiver. Such children, although living with extended family members, may face risks similar to those encountered by unaccompanied refugee children. Consequently, the term ‘separated child’ is now widely used to draw attention to the potential protection needs of this group. ‘Separated children’ are thus defined as children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver’. See UNHCR, Trends in Unaccompanied and Separated Children Seeking Asylum in Europe, 2000 (November 2001), p. 2. Available at: <https://www.unhcr.org/statistics/unhcrstats/3c060c804/trends-unaccompanied-separated-children-seeking-asylum-europe-2000.html> [accessed 19 August 2019].

<sup>159</sup> Interview with Dutch Council for Refugees, 6 February 2019.

vertrouwensbeginseel). These unaccompanied minors are confronted with return to a third country under the Dublin Regulation. STIL Utrecht provided an example of two unaccompanied girls from Eritrea whom they were supporting:

*“They [the girls] bridged the eighteen months that are necessary for the Dublin claim to expire. One girl turned eighteen in the meantime. The other girl is seventeen. They arrived in Europe through Italy. They declared themselves to be adults in Italy. I assume this was advised to them so that they would not fall under a child custody system there and in case they would not be able to travel on. [...] Nidos cannot play a role in such a case. So, they were alone and scared to be forcibly returned to Italy. They fled from the reception centre.”<sup>160</sup>*

– Interviewee STIL Utrecht

While this interviewee speaks of two Eritrean girls, most of these cases concern Eritrean boys.

Immigration lawyers assist these unaccompanied minors by providing evidence of their minority. Yet, one interviewee believes that Eritreans are often unable to obtain identity documents and therefore cannot prove that they are minors, and that as a result it is commonly but erroneously assumed that Eritreans should be able to account for their itinerary, and that they have neglected to bring documents. According to the interviewee, this is often not the case: “[I]t is a completely different country, a different culture, a very different mindset.”<sup>161</sup>

Another immigration lawyer explains the current deadlock in one of these cases. On the one hand, Nidos avers that the child is a minor; on the other, however, the IND states that the person has been registered as an adult and refers them to the Italian authorities in case they wish to amend this status. In a strict legal sense this is correct, the lawyers explained, “but for this boy this does not mean anything good.”

The location manager of the COA described the usual reasons for asylum applications made by Eritreans being declined and the consequences:

*“[T]his predominantly has to do with unclarity in their story, and the fact that they have been in other places in Europe to apply for asylum. It also has to do with age, name, nationality. [...] If in the end the ‘no’ is upheld, the right to shelter in the reception centre ends. [...] They can be arrested, but they cannot be put in migration detention if there is no possibility for forced return. That is quite a problem. The Dutch government then basically says: ‘you have come here by yourself, on your own. You better make sure that you return as well and do not remain here.’”*

– COA Location Manager

<sup>160</sup> Interview with STIL Utrecht, 27 February 2019.

<sup>161</sup> Interview with Dutch Council for Refugees, 6 February 2019.





Argos, a Dutch investigative journalism radio programme, recently researched the way this group is identified in Italy and the causes of their frequent misidentification as adults. During this programme, sharp criticism was directed at the Dutch approach to these cases, with its strict adherence to the interstate principle of legitimate expectations (*het interstatelijk vertrouwensbeginse*) in respect of these children who have wrongly been registered as adults in Italy. Criticism has been made by Nidos (by way of a written statement), Mark Klaassen of the Department for Immigration Law at Leiden University, and lawyer Wil Eikelboom on behalf of the Dutch Association for Asylum Lawyers.<sup>162</sup>

Unaccompanied boys from Albania and North Africa differ from other unaccompanied minors in the Netherlands in that they rarely aim for, or expect to receive, a residence permit in the Netherlands. Albanian youngsters generally only reside in the Netherlands (or Belgium) in order to arrange an illegal border crossing to the United Kingdom. The United Kingdom is their preferred destination as their family and friends often live there, or they believe that employment is relatively attainable. While an Albanian passport allows these children to stay in the Netherlands for up to three months, they need a visa to enter the United Kingdom. In the Netherlands, these mostly Albanian boys (as well as Albanian men) are often called ‘climbers’, because when they try to enter the United Kingdom illegally, one common method of doing so is by cutting through a truck’s tarpaulin cover at the harbour of Rotterdam and climbing in just before the truck sets off for the United Kingdom.<sup>163</sup>

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<sup>162</sup> NPO Radio 1, ‘Vluchtelingenkinderen op straat door verkeerde registratie’ [‘Refugee children on the street due to incorrect registration’] (4 May 2019). Available (in Dutch) at: <https://www.nporadio1.nl/argos/onderwerpen/499671-vluchtelingenkinderen-op-straat-door-verkeerde-registratie> [accessed 19 August 2019].

<sup>163</sup> See also NRC Handelsblad, ‘Aantal ‘inklimmers’ Rotterdamse haven flink gestegen’ [‘Number of ‘inklimmers’ at Rotterdam port has considerably increased’] (21 March 2019). Available (in Dutch) at: <https://www.nrc.nl/nieuws/2019/03/21/aantal-inklimmers-rotterdamse-haven-flink-gestegen-a3954145> [accessed 19 August 2019].



Furthermore, various interviewees considered unaccompanied minors from North African countries, most notably Morocco and Algeria, to be a problematic group. An interviewee from Nidos explained:

*“North Africans often know they don’t stand a chance [of getting asylum in the Netherlands]. They know it when they apply. Often, they do not even attend interviews. It is a worrisome group that is growing very fast. All their applications are considered inadmissible [...]. A nomadic group of boys is arising. They travel from country to country and apply for asylum. I find this striking. What I encountered myself is that when the boys are freshly arrived from Morocco you can still work with them. They are nice boys. But after they have been hanging around with peers, who have been here for a longer period of time, or when they arrive from other European countries, things swiftly start to move in the wrong direction. They are in trouble in no time. So, the trick is to contact and work with them very fast and place them in small scale shelters with extra care.”<sup>164</sup>*

– Interviewee Nidos

Interviewees from Nidos said that these boys generally come from poor backgrounds, and are often pursuing prosperity, but they “don’t have the means to achieve this through the normal routes. They in fact tend to flourish if they are given the chance.”<sup>165</sup> Unaccompanied minors from North Africa do not generally receive a residence permit, yet they rarely enter the facilities of the COA, which aims to assist unaccompanied minors whose asylum application has been rejected. The boys are inclined to turn to illegality and criminality, and sometimes end up being psychologically harmed:

*“It is a very sad group. I have seen boys that totally lost it, and eventually found themselves in closed youth care facilities or in psychiatric institution. [...] I think it is complete hopelessness. They probably left with a task they cannot fulfil. A little while back I came across a boy who used magic mushrooms. That was the trigger. All his misery came out and he ended up in a week-long psychosis.”<sup>166</sup>*

– Interviewee Nidos

As long as they are underage, these boys are rarely returned by force from the Netherlands. Algeria and especially Morocco are uncooperative with forced return. In the meantime, the group of North African boys is growing. Nidos estimates that they have four to ten rejected asylum applications per week from North African boys, who are resultantly not permitted to stay in the Netherlands.

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<sup>164</sup> Interview with Nidos, 5 February 2019.

<sup>165</sup> Interview with Nidos, 5 February 2019.

<sup>166</sup> Interview with Nidos, 5 February 2019.

## 4.2 Profile of and support provided to accompanied children

The countries of origin of accompanied children most frequently mentioned by the lawyers and civil society organizations interviewed for this study are Armenia, Iraq, and Afghanistan. Among the other nationalities of migrant children within families being supported are Iranians, Syrians, Lebanese, Eritreans, Sierra Leoneans, Ghanaians, Brazilians, Chinese, and Georgians.

While the nationalities of unaccompanied and accompanied children thus largely overlap, it is conspicuous that Armenian children for the most part arrive in the Netherlands with their families.

An immigration lawyer explains that Eritrean children often arrive alone, and that this is frequently also the case for Afghan and Syrian children, but that Iranian minors mostly come to the Netherlands with their families.<sup>167</sup>

While unaccompanied minors are overwhelmingly boys aged between fifteen and eighteen, the sexes and ages of children arriving within families are very diverse.

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<sup>167</sup> Interview with an immigration lawyer, 15 February 2019.

# **PART III: CONCLUSIONS & RECOMMENDATIONS**



## 5 Conclusions

A number of examples of good practices and challenges emerged from this study. An overview of good practices is given at the start of this study. A summary of the key findings is provided below by subject.

### Implementation of the best interests of the child principle

The principle of the best interests of the child is not included in the Dutch Aliens Act, neither is it operationalized in a systematic manner. Further, there is no formalized Best Interests Determination (BID) incorporated into the Dutch asylum and return procedures, nor are there formal criteria to assess the best interests of the child. The Best Interests Assessments (BIA) and Best Interest Determinations (BID) carried out by the IND are not sufficiently thorough, and do not include input or other involvement from the child or from other organizations, the guardian, or the lawyer.

### Delays in procedure

In practice, the asylum procedures in the Netherlands have proven to be very lengthy and they are often prone to delays. There are many backlogs, and the time set for the procedures is often exceeded.

### Migration detention

The Netherlands imposes migration detention for both accompanied and unaccompanied children. This is a damaging practice, and there is no evidence that it influences return numbers. Thus far, the Netherlands has not actively searched for or seriously considered alternatives to migration detention.

### **Asylum and return procedure**

Child-specific reasons for flight, alongside country information with a focus on children, are not consistently considered in family asylum procedures filed in the Netherlands. There also seems to be a lack of child-specific information on the country of origin and the return conditions in the country of return. A dedicated agency within the Ministry of Justice and Security (DT&V) works on the return of rejected asylum seekers. This agency builds a knowledge base on what works and does not work in the case of return. The study also reveals that the staff of the specialized team for unaccompanied children at the DT&V would profit from more extensive training on communicating with children.

If children (with or without families) do not voluntarily leave the country after a negative decision is given against an asylum claim, the Dutch authorities will carry out forced return for both unaccompanied and accompanied children.

The Dutch immigration authorities have no formal policy to prepare accompanied children for their (voluntary or forced) return. Accompanied children are not separately invited or heard, apart from their families, during the return process.

In general, there is a lack of preparation for returns targeted specially at children, and limited support of children within the return process; there is, for example, an absence of child-friendly information on returns. There are, further, no systematic, individualized return plans prepared for children.

Currently, no public data is available on the annual number of returns of all children (planned and completed), or on the number of children in detention for immigration purposes.

### **Assistance by guardians and lawyers**

Guardians and lawyers are not always present during return meetings with the DT&V. Lawyers are not always involved in return process. Legal support after a negative decision is limited. Guardians often have unreasonably heavy caseloads.

### **Post-return monitoring**

There is a deficiency of post-returns monitoring and follow-up for children and their families, for both voluntary and enforced returns.





## 6 Recommendations

On the basis of the findings in this study, UNICEF The Netherlands recommends that the following measures be implemented.

### Best Interests

- Embed the best interests of child principle in the Dutch Aliens Act (**Ministry of Justice & Security**);
- Perform thorough and well-documented Best Interests Assessments (BIA) and put Best Interests Determination (BID) processes in place, in order to make returns child friendly. This should be done in a systematic and objective manner for all children (both accompanied and unaccompanied), and in co-ordination with other government bodies responsible for child protection. This is critical to assuring that all of the necessary information concerning the child's best interests is made available to decision-makers, so that the child's best interests are a primary consideration for determining the asylum or immigration outcome and can inform a durable solution for each child (**Ministry of Justice & Security, Immigration and Naturalization Service and Repatriation and Departure Service**);
- Provide training and develop clear and formal criteria and guidance for the migration authorities to consider the best interests of the child in every asylum request (**Ministry of Justice & Security, Immigration and Naturalization Service**).

### Support for unaccompanied asylum-seeking children

- Strengthen the role of the guardians in the return process of unaccompanied children. A more active role for the guardian can contribute to a sustainable prospect for unaccompanied children whose application for asylum has been rejected, and accordingly

may contribute to a sustainable return (**Ministry of Justice & Security, Repatriation and Departure Service + Nidos**);

- Ensure that the guardians and lawyers are present during the interviews and in the return meetings with DT&V (**Ministry of Justice & Security, Repatriation and Departure Service, Nidos + immigration lawyers**);
- Do not forcefully return unaccompanied children (**Ministry of Justice & Security, Repatriation and Departure Service**).

#### Access to legal aid

- Provide specialized training for immigration lawyers and other legal advocates on children's rights and child-appropriate practices (**Immigration lawyers**);
- Make sure that legal support is available during the return process and that immigration lawyers are involved in the return process. Lawyers might be more inclined to do so if compensation for this part of the asylum process were made available (**Ministry of Justice & Security, Repatriation and Departure Service + immigration lawyers**).

#### Detention

- Put an end to the use of immigration detention of both accompanied and unaccompanied children (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Actively search for and implement alternatives to migration detention for all children (**Ministry of Justice & Security, Repatriation and Departure Service**).

#### Asylum and return procedure

- Provide training to employees of the Repatriation and Departure Service and to immigration lawyers on supporting children. This training should include child-specific communication techniques (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Intensify efforts to reduce the backlogs in the asylum application and return process and prevent further delays, including strengthening the capacity of the immigration and naturalization services. The authorities should make sure to adhere to the time allotted for the procedures. Children, whether unaccompanied or within families, need as soon as possible to have clarity about the potential of staying or the obligation to return. The current lengthy procedures are extremely harmful to children (**Ministry of Justice & Security, Immigration and Naturalization Service**);
- Consistently consider child-specific reasons for flight in family asylum procedures (**Ministry of Justice & Security, Immigration and Naturalization Service**);
- Develop and use child-specific country reports/information in all asylum procedures (including return) for both accompanied and unaccompanied children (**Ministry of Justice & Security, Immigration and Naturalization Service**);
- Conduct age assessments for children who are clearly younger than 18 years of age but are registered as adults in another European member state (**Ministry of Justice & Security, Immigration and Naturalization Service**);
- Make sure that immigration lawyers and/or guardians are present at return meetings with the Repatriation and Departure Service (DT&V) and IOM. Compensating lawyers for this part of the asylum process should be considered (**Ministry of Justice & Security, Repatriation and Departure Service, IOM + immigration lawyers**).

### Returns support and reintegration

- Prepare children for their return as thoroughly as possible, by involving them in the return and by making sure that they receive, in a child-friendly way, all relevant information about the return process, the decision, and reintegration in the country of return. This includes child-friendly and child-specific counselling sessions (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Make sure involved organisations coordinate their work for families and children in return procedures (**Ministry of Justice & Security, Repatriation and Departure Service, NGOs, Child Care and Protection Board**);
- Perform thorough family assessments before returning an unaccompanied child to the family, based on the rights of the child (**Ministry of Justice & Security, IOM and Repatriation and Departure Service**);
- Make sure that procedures for family tracing and contact are based on the rights of the child, meaning that family tracing can only be performed if it is in the best interests of the child, if the child has given permission, and if it is conducted in a safe manner (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Continuously assess the security situation of a country as part of the return procedure (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Make sure that immigration lawyers are able to support children and families in return procedures (**Ministry of Justice & Security, Repatriation and Departure Service**);
- Establish an independent and thorough monitoring system (**Ministry of Justice & Security, Immigration and Naturalization Service**);
- Always develop individual return plans, including practical arrangements on education, medical care, housing, and work. Standardized individual return plans do not suffice (**Ministry of Justice & Security, Repatriation and Departure Service**).

### Data

- Collect and publish annual data on the number of returns (both forced and voluntary) of accompanied and unaccompanied children, and the number of children in detention for immigration purposes (**Ministry of Justice & Security, Immigration and Naturalization Service and Repatriation and Departure Service**).



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# ANNEX 1 – OVERVIEW OF THE ASYLUM PROCEDURE IN THE NETHERLANDS

## STEP 1

### Registration of the Asylum Seeker at the COA's Central Reception Centre (COL) in Ter Apel.

The AIVM / Dutch Aliens Police (vreemdelingenpolitie) execute the registration and identity research; this is the formal start of the asylum application.

## STEP 2

### Rest and Preparation Term in the COL (lasts a minimum of 6 days\*).

Medical examination performed by GZA (Asylum Seeker Healthcare), and check by GGD.

After this term, the asylum seeker moves from COL to the Process Reception Centre (POL), where they await the first interview.

\*for an unaccompanied child, the resting term lasts at least 3 weeks.

## STEP 3

### Start of the General Asylum Procedure

The asylum seeker stays at the POL location and will be informed about the asylum procedure of the Immigration and Naturalization Service (IND), and be appointed a lawyer.

The COA informs the asylum seeker of the start date of the General Asylum Procedure by the IND, when this has been confirmed. The Procedure takes 8 days, during which there are multiple interviews with the asylum seeker.

Following this, the IND renders its decision. The asylum request may be:

- 1) Rejected;
- 2) Granted;

(in both of these cases, the procedure will continue to step 5) or

- 3) The case is referred to the Prolonged Asylum Procedure (Verlengde Asielprocedure (VA)), because more research is necessary, for instance through an additional interview. Step 4 follows this outcome.

In all of the above-mentioned cases, the asylum seeker first moves to the Asylum Seekers' Centre (AZC).

## STEP 4

### Start of the Prolonged Asylum Procedure (at the AZC)

The IND decides which asylum track will be applied. The waiting time depends on the track. The IND is legally bound to render its decision within 6 months of the Prolonged Procedure commencing.

- Track 1: Dublin cases (people that applied for asylum in another country prior to NL), which have little chance of resulting in a residence permit. Average waiting time at present: 13 weeks.
- Track 2: asylum seekers from third countries (regarded as safe countries by NL) have very little chance of being granted a permit. Average waiting time at present: 4 weeks.
- Track 4: 8-day General Asylum Procedure only; waiting time at present: 26 weeks. These asylum seekers have a greater chance of being granted a permit. When the Prolonged Asylum Procedure is applied, the waiting time can be up to 42 weeks.
- Tracks 3 and 5 are currently intermitted by the State Secretary of Justice & Security. These tracks can be reopened whenever the State Secretary believes it necessary to do so.

## STEP 5

### The IND renders its decision

This can either be:

- Temporary residence permit of 5 years is given: the Asylum Seeker commences the immigration process by beginning to learning Dutch, and waits at the AZC to be allotted a house in the community (gemeente).
- Rejection:
  - If at the end of the General Asylum Procedure (step 3) asylum is not granted, the asylum seeker has one week to file an appeal at the court.
  - If rejection happens during the Prolonged Procedure (VA), the asylum seeker has four or six weeks to react to this rejection.
  - If rejection is the final decision, preparation of repatriation to the country of origin is begun by the Repatriation Services (DT&V). Families will move to a family location (GL), while individuals move to a freedom restricting location (VBL) to await their ejection.



# ANNEX 2 – DATA ON ASYLUM AND RETURN IN THE NETHERLANDS

## 1. Decisions on asylum claims, 2017 and 2018<sup>168</sup>

In 2017: 1,650 asylum applications from Unaccompanied Minors (UAM) were dealt with.

In 2017: 750 asylum applications from UAM were denied (negative decision).

In 2018: 850 asylum applications from UAM were dealt with.

In 2018: 500 asylum applications from UAM were denied (negative decision).

In 2017: 3,150 asylum applications from minors were dealt with (not UAM).

In 2017: 1,850 asylum applications from minors were denied (not UAM).

In 2018: 2,550 asylum applications from minors were dealt with (not UAM).

In 2018: 1,900 asylum applications from minors were denied (not UAM).

## 2. Unaccompanied children under guardianship and children placed under supervision

### Unaccompanied children

Over recent years, Nidos has functioned as a guardian for the following numbers of unaccompanied children:

2014: 2,582 unaccompanied minors<sup>169</sup>

2015: 5,434 unaccompanied minors

2016: 5,678 unaccompanied minors (including 2,037 new cases)

2017: 4,469 unaccompanied minors (including 1,816 new cases)

### Children placed under juvenile supervision

Nidos has also functioned as a family guardian for children who have been placed under supervision by a juvenile judge. The following numbers of children have thus been supported:

2014: 231 children

2015: 206 children

2016: 240 children

2017: 338 children (including 176 new cases)

64% of these children live with their parents. 17% are living with a foster family. 18% are living in a juvenile home in order to receive treatment. 1% are living elsewhere.<sup>170</sup>

The Child Care and Protection Board does not have any statistics respecting migrant and refugee children receiving their support, as this is not registered.

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<sup>168</sup> Data provided by the IND.

<sup>169</sup> See Stichting Nidos, Jaarverslag 2017.

<sup>170</sup> Ibid.

### 3. Voluntary and forced return<sup>171</sup>

**Table 3a: Voluntary and forced return of minors, excl. Dublin-cases, round figures:**

	2016	2017	2018
<b>Voluntary returns</b> – excl. Dublin transfers – of children from the Netherlands	1200 (1160 accompanied, 40 unaccompanied)	440 (400 accompanied, 40 unaccompanied)	580 (540 accompanied, 40 unaccompanied)
<b>Forced returns</b> – excl Dublin transfers – of children from the Netherlands	85 (80 accompanied, <5 unaccompanied)	70 (60 accompanied, 10 unaccompanied)	70 (60 accompanied, 10 unaccompanied)

**Table 3b: Voluntary and forced return of minors, incl. Dublin-cases, round figures:**

	2016	2017	2018
<b>Voluntary returns</b> – incl. Dublin transfers – of children from the Netherlands	1670 (1610 accompanied, 60 unaccompanied)	630 (580 accompanied, 50 unaccompanied)	800 (760 accompanied, 40 unaccompanied)
<b>Forced returns</b> – incl. Dublin transfers – of children from the Netherlands	120 (110 accompanied, 10 unaccompanied)	100 (80 accompanied, 20 unaccompanied)	100 (80 accompanied, 20 unaccompanied)

### 4. Top 3 countries of return<sup>172</sup>

**Table 4a: Departure from the Netherlands of accompanied children, top 3 countries, Dublin/non-Dublin cases, round figures:**

	2016	2017	2018
<b>Detention</b> – Accompanied children returned from <b>detention center</b> (GGV)	1. Armenia 2. Afghanistan 3. Albania	1. Afghanistan 2. Albania 3. Serbia & third/EU-country	1. Serbia 2. Ukraine 3. Albania, Azerbaijan & third/EU-country
<b>No detention</b> – Accompanied children returned from <b>Family Location/asylum centre</b> (GL/AZC)	1. Third/EU-country 2. Albania 3. Serbia	1. Third/EU-country 2. Albania, Moldova, Serbia 3. Iraq	1. Third/EU-country 2. Moldova 3. Albania

Forced return of accompanied children always includes detention.

<sup>171</sup> Data provided by DT&V in October 2019 (rounded to the closest 10)

<sup>172</sup> Data provided by DT&V in October 2019 (rounded to the closest 10)

**Table 4b: Departure from the Netherlands of unaccompanied children, top 3 countries, Dublin/non-Dublin cases, round figures:<sup>173</sup>**

2016	2017	2018
1. Germany <sup>174</sup> 2. Other third/EU-country 3. Albania	1. Germany <sup>175</sup> 2. Albania, Afghanistan Honduras 3. Other third-EU-country	1. Germany <sup>176</sup> 2. Other third-EU-country 3. Albania

## 5. Returns assisted by the IOM<sup>177</sup>

2018 UAM	Countries of Return
17 applied for voluntary return 48 registered 13 actually returned	Albania, Brazil, Afghanistan, Angola, Chile

2018 ex-UAM	Countries of Return
6 applied 7 registered 3 actually returned	Brazil, Guinea, Vietnam

### 2018 families

763 families left, of which 45 did so from the family locations.

By way of comparison, total returns through the IOM (voluntary returns) were:

In 2016: 5,400

In 2017: 1,500

In 2018: 2,100

In 2019: around 300 per month

## 6. Migration detention

### Unaccompanied children

In 2018, around 50 unaccompanied children were placed in the GGV, of which around 10 already entered in 2017. All 50 left in 2018 <sup>178</sup>.

### Accompanied children

In 2018, around 160 accompanied children (of 80 families) stayed in detention on the GGV (including 10 in border detention).

<sup>173</sup> No segregated data available on unaccompanied children returned from detention center (GGV) and unaccompanied children returned from Family Location/asylum centre (GL/AZC)

<sup>174</sup> Third/EU-country

<sup>175</sup> Third/EU-country

<sup>176</sup> Third/EU-country

<sup>177</sup> Data provided by IOM in February 2019.

<sup>178</sup> Source DJI (rounded to the nearest ten), provided by DT&V in October 2019.



**Table 5: Stay in detention 2018<sup>179</sup>**

Number of days	Unaccompanied children	Accompanied children: Border detention:	Accompanied children: Migration detention
1	10	<5	<5
2	<5		10
3	10		10
4	<5		20
5	<5		20
6		30	
7	<5		20
8		10	
9	<5		10
10	<5		10
11	<5		<5
12	<5		<5
13		<5	
14	<5		10
15			
20		<5	
21		<5	
22		<5	
24		<5	
25		<5	
27		<5	
30		<5	
32		<5	
34		<5	
36		<5	
38		<5	
41		<5	
49		<5	
55		<5	
56		<5	
67		<5	
82		<5	
<b>Average amount of days</b>	<b>20</b>	<b>&lt;5</b>	<b>10</b>

<sup>179</sup> Source DJI (rounded to the nearest ten), provided by DT&V in October 2019.

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