

**SEPARATED CHILDREN IN EUROPE PROGRAMME
QUESTIONNAIRE FOR COUNTRY ASSESMENT
THE NETHERLANDS**

COUNTRY:

The Netherlands

EVALUATION PERIOD:

2001-2003

RESPONDENT:

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AGENCIES/ INDIVIDUALS CONSULTED:

The network of Defence for Children international the Netherlands consists of (people that have been consulted upon besides the others mentioned in the previous report):

- Theo Noten, Anke van den Borne, ECPAT.
- Y. Zwetsloot (policymaker), NIDOS
- Mrs. T. Wijn/ W. Lozowski/ M. Reneman, policymakers of The Dutch Refugee Council
- D. Engelhard, Pharos
- D. van Veelen: the Asylum Seekers Legal Advice Centre (*Stichting Rechtsbijstand Asielzoekers*)

NEW DOCUMENTS USED OR REFERRED TO:

- Alleenstaande minderjarige asielzoekers, Tweede Kamer, 2000-2001, 27 062, nr. 14.
- Ecpat and DCI-NL, *Trafficking in children for sexual purposes from Eastern Europe to Western Europe. An exploratory research in eight Western European receiving countries*, edited by Annemieke Wolthuis and Mirjam Blaak, Amsterdam 2001.
- Het Kinderrechtencollectief: [The Dutch NGO Coalition for Children's Rights] Youth reporting on children's rights in the Netherlands, On the implementation of the UN Convention on the Rights of the Child in the Netherlands, November 2002.
- Het Kinderrechtencollectief: [The Dutch NGO Coalition for Children's Rights] Growing up in the Low Countries, Children's Rights in the Netherlands, The second report of the Dutch NGO Coalition for Children's Rights on the implementation of the Convention on the Rights of the Child in the Netherlands, Annex alien policy and children's rights.
- Human Rights Watch (HRW), *The Netherlands, fleeting refuge: The triumph of efficiency over protection in Dutch asylum policy*, 2003.
- Lozowski, W., *Evaluatie horen ama's 4 tot 12 jaar* ('Evaluation of the interviewing of unaccompanied minor asylum seekers aged 4 to 12'), 26 February 2003

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DEFINITION OF “SEPARATED CHILD” (SGP:A 2.1)

- a) Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of this.**

Regarding the definition of a separated child an alien is an unaccompanied minor if he or she is under 18 years old and not married or registered. If the age is unknown (no official documents) an age assessment can be undertaken. After this age-examination a new age will be appointed to the youngster (see also 5).

Furthermore the child must be unaccompanied. Under the former policy, a child was considered as separated if not accompanied or cared for by one or both parents, a blood relative aged over 18 or a relative by marriage aged over 18. Following the new policy, a child is no longer determined to be separated if he/she is accompanied by an adult who is responsible for the supervision or care of the minor or who can be considered to have this responsibility and who can be expected to take care of the minor. Even when the unaccompanied minor asylum seeker in reality has not been accompanied by this relative, but the relative is residing in the Netherlands or has the Dutch nationality the unaccompanied minor asylum seeker is no longer treated under the policy for unaccompanied minors. A person who is a family member of the minor up to the fourth degree (such as a sister, brother, uncle, aunt, cousin, grandparent) is supposed to have the responsibility for the supervision or care of the minor. The responsibility for the supervision or care is also assumed if a family member other than mentioned or an adult who is not a family member of the child, can supervise or take care of the child. This is the case if the adult supervised or took care of the minor before in a more than incidental basis. These children are referred to as ‘supervised unaccompanied asylum seeking minors’ (*begeleide alleenstaande minderjarige asielzoekers*, or ‘BAMAs’).¹ Most of these relatives have no legal obligation to care and no formal authority to do so.

- b) Are children with older siblings over 18 years of age considered to be separated children? Please refer to Annex II of UNHCR Guidelines 1997.**

(See also abovementioned.)

Firstly: Separated children who come into the Netherlands with an older sibling over 18 years of age are not classified as unaccompanied. If the older sibling doesn’t have the right to reception e.g. in a reception centre (*onderzoeks-en opvangcentrum* or *asielzoekerscentrum*), the younger child also has no right to reception

Secondly: Separated children who come into the Netherlands and it seems that there is a relative over 18 already staying in the Netherlands, this child is no longer classified as unaccompanied. These children are contrary to the former policy no longer entitled to protection under the unaccompanied minor asylum seeker-policy (further: uma-policy). In practice this means that:

- Regarding the provision of care facilities the minor with a relative loses the right to reception under the uma-policy. The relative is found responsible for the child and a guardian is no longer appointed for the child.
- The child is forced to depart without the need for any Immigration and Naturalisation Service (*Immigratie- en Naturalisatie Dienst/ IND*) investigation into the availability of adequate care in the country of origin, because the review under the uma-policy does not

¹ Dutch Alien Circular 2000 C2/2.1.3 and 2000 C 2/7.10. This Circular came into force on 4/1/2001.

take place. The adult must provide for the presence of adequate care for the child in question 'in a country other than the Netherlands'.

With regards to Annex II of the UNHCR Guidelines 1997:

- No careful assessment takes place of all known facts before the refugee claim of a child is attached to the refugee claim of the caregiver.
- The quality and durability of the relationship between the child and the caregiver aren't evaluated carefully to decide whether the presumption of "unaccompanied status" should be set aside.
- The BAMA-policy is in violation with article 20 Convention on the Rights of the Child (CRC).

c) To what extent does this conform to the Statement?

The definition of an unaccompanied minor asylum seeker used in the Alien Circular is narrower than the definition of a separated child as used in the Statement of Good Practise.

Every child has the right to request for asylum. However if an unaccompanied child does not apply for asylum he/she cannot benefit from the protection provided to unaccompanied asylum seekers.

A second and more extended (compared to previous country assessment) difference in the definition is that the Dutch Alien Circular does not consider children who have a family member to the fourth degree living in the Netherlands unaccompanied. They are not appointed to a guardian by a judge, and they have no rights to care-facilities (unless the relative has a right to a care-facility). This BAMA-policy is in violation with article 20 CRC and the Statement.

d) Are any changes needed? In relation to any first principle?

The changes that are needed:

- A child who arrives or is present in the Netherlands without a legal representative should be considered as a separated child and therefore fall under the special care of the Dutch authorities.
- Supervised underage asylum seeking minors (BAMA's) should be processed by the IND under the underage asylum seeking minors policy, despite the fact that they have supervisors.
- The quality of the care provided by the supervisors of supervised underage asylum seeking minors should be investigated by the IND. It would be better if the investigation is done by an organisation like Nidos or the Red Cross or another (independent) organisation.
- The Dutch government should amend current asylum and immigration law and policy so that the definition of unaccompanied minors is in conformity with accepted international and regional standards (article 20 CRC) (HRW, 2003, p.26).

1. ACCESS TO THE TERRITORY (SGP: C1)

1.a) Please describe:

All unaccompanied asylum seeking minors, regardless of age, must now submit the asylum request in an AC. People who arrive at Schiphol Airport and apply for asylum there, are refused entry to the country. They are deprived of their liberty and taken to the Application Center (AC) at Schiphol. In AC Schiphol their asylum application is assessed. Among these people are families with children and unaccompanied minors.

During the asylum procedure the asylum seekers are detained in the AC Schiphol. Some of them go through to the 'normal' asylum procedure and are sent to an open center for asylum seekers after the first interview. Most of them (sometimes 67 %, this number fluctuates) are rejected in the AC in an accelerated procedure. Unaccompanied children are not detained and always get permission to go to a special reception centre for unaccompanied minor asylum seekers.

Separated children can also enter the Netherlands via the German border, the Belgian border and the Northeast region. These minors have to submit their request depending on the point of entry into the Netherlands: AC Rijsbergen (on the Belgian border) AC Zevenaar (on the German border), AC Ter Apel (Northeast region) and AC Schiphol (upon arrival at Schiphol Airport). The IND is planning to treat all unaccompanied minor asylum seekers at AC Rijsbergen in the future. It is not clear yet whether this also applies to unaccompanied minor asylum seekers who arrive at Schiphol airport.

1.b) To what extent does this conform to the Statement? Please outline in brief.

Children have access to the territory. This complies with the Statement of Good practice. However minors are being detained in AC Schiphol during the accelerated procedure of 48 hours. All children regardless of age could now be (see 11) interviewed during this accelerated procedure at the point of entry. This does not comply with the Statement of Good practice.

1.c) Are any changes needed? In relation to any first principle?

- The AC procedure by its nature is unlikely to ensure that unaccompanied children's special characteristics and needs are taken into account.²
- Children should not be detained for immigration reasons like in AC Schiphol.
- Children should be offered some rest before they are interviewed on their asylum motives.

1.d) Please also indicate whether your country has a "carrier liability legislation" whereby airlines, train and boat companies can be fined if they bring someone without proper documents. Is this applied to children and young people under the age of 18?

In the Netherlands, the so-called "carrier-liability" legislation applies irrespective of the asylum seeker's age. The carrier liability is laid down in article 4 and 5 of the Alien Act 2000. However, in practice it is not applied once children arrive at the airport on their own. Instead, they are taken to the registration centre for identification.

(SGP: C1.2) See the appendix at the end of the document for the answers on Trafficking

2. IDENTIFICATION (SGP: C2)

2.a) Please describe: relevant law and policy in your country

All unaccompanied minors that seek asylum have to put an asylum claim in one of the application/registration centres according to the Dutch **Alien Act 2000** (see 1a). The aliens registration office that resides at these centres is responsible for the first identification of asylum seekers. After an explanation by the Refugee Council about the following procedure an employee of the aliens registration office tries to determine the identification of the alien

² Human Rights Watch (HRW), *The Netherlands, fleeting refuge: The triumph of efficiency over protection in Dutch asylum policy*, 2003.

(this includes unaccompanied minor asylum seekers). The identification takes through **frisking** (fouilleren), a quick scan, fingerprints and photo's. The authority of the registration office is based on articles **52 and 55 part 2 and 3 of the Aliens Act 2000 and the Aliens Circular 2000 C3/12.4**. Afterwards the royal **constabulary** (*Koninklijke Marechaussee/Kmar*) checks the authenticity of the documents. During the preliminary hearing that follows by the IND questions are asked on the identity, nationality, family relations, (possible) criminal antecedents and the travel route. The IND has the possibility to ask more supplementary questions after the preliminary hearing on the identification. The unaccompanied minor asylum seeker may have to undergo a nationality check, a language analysis and an age examination (see 5). Furthermore the IND can ask another authority to engage in research of the identification of the alien, e.g. the Ministry of Foreign Affairs. In 2000 the European Commission came with a proposal for a system, EURODAC, that in the beginning of the year 2000 has come into force. Through the system Member States can compare the fingerprints of asylum seekers. In 2002 the system also became applicable to separated children.

Furthermore the quality of the care provided by the relative to the fourth degree of the underage asylum seeking minors that is residing in the Netherlands is not sufficiently investigated by the IND (see also 1 BAMA-policy). It is assumed that the if an adult relative is found he/she is capable and willing to take care of the child.

2.b) To what extent does this conform to the Statement? Please outline in brief.

- The nature of the relationship between an unaccompanied child and a family member to the fourth degree is not sufficiently investigated by the IND.
- The nationality check and language analysis have been sharply criticised by different organisations in the Netherlands as methods of determining the country of origin of an undocumented asylum seeker. Furthermore, the value of these methods when applied to children is questionable.

Above mentioned does not conform to the Statement of Good Practice.

2.c) Are any changes needed? In relation to any first principle?

- The nature of the relationship between an unaccompanied child and a relative that is (already) living in the Netherlands should be investigated more sufficiently by the IND.
- Information of the child should be thoroughly investigated, to find out who the child is, he's/she's background and what the reasons are for coming to the Netherlands. Account should be taken that a child is involved.

3. APPOINTMENT OF GUARDIAN OR ADVISER (SGP: C3)

3.a) Is a guardian or adviser appointed?

A guardian is appointed by a cantonal judge based on the rule in the Dutch Civil Code that every child must be under parental authority (1:245 Burgerlijk Wetboek). The Code states that all minors residing in the Netherlands must be provided with legal guardianship. All minors Dutch or alien, must have a legal guardian. Usually this is a parent, and in the absence of a parent, the government must ensure that a guardian is appointed. The Dutch Civil Code requires that every child must be under guardianship. Consequently, this also applies to separated children who are not over 17 years and 6 months old. Minors who are older than this do not have a court appointed guardian because of the approaching majority. In practice the appointment of a guardian takes place in legal proceedings resulting in appointing a guardian by the cantonal judge. Guardianship is therefore always a result of a judicial decision. In practice, a representative of Guardian Foundation Nidos (formerly: the Opbouw) will be appointed as guardian, but family members of the minor concerned may be appointed if they live in the Netherlands (Vreemdelingen-circulaire C5-24, 6 and 8).

3.b) If so what is their role?

The role of the guardian is to protect the interests of the child. According to article 1:247 second phrase, a guardian is responsible for the good treatment of a pupil, he is responsible for upholding the rights of the pupil. The key principles for the guardian are: supervise, control and intervene.

Nidos is taking care that:

- education and care is given;
- the interests of a pupil and protecting his rights are promoted;
- the pupil is guided in such a way that he or she will be able to look after themselves when coming of age, they are guided in building their own network;
- financial support is given;
- the (asylum) procedure of the pupil is supported by making sure that the pupil will be assigned with a lawyer, by preparing the pupil on the procedure as a whole and the interview in specific, etc.

Each court appointed guardian has approximately 24 wards. However the plans laid down in the new uma-policy are that this will be 1:45. The guardian will visit the pupil on a monthly basis, will have a dialogue with the supervisors of the pupil on a monthly basis and if necessary, more often. The guardian will also be in contact with relevant organizations such as school, the IND, lawyers and the newcomer's office e.g. However in practice the communication between the guardian and the IND often takes place through the lawyer of the minor.

Furthermore with the introduction of the new uma-policy, a new reception model has been implemented. This new reception model is linked to an integration model and a return model. There is a different approach in both models. With the introduction of the new uma-policy, a new reception model has been implemented. This new reception model is linked to an integration model and a return model. After a basic period (six to nine months), minors expected to remain in the Netherlands for longer than 3 years are placed in the integration model. These minors are placed in small living units (KWEs), small living groups (KWs) and in foster families. Where they are prepared to live in Dutch society. Nidos is responsible for selecting and placing children in the integration model.

Those not expected to remain in the Netherlands for longer than three years are placed in the return model, in which preparation for return is the main emphasis. Unaccompanied asylum seeking minors younger than 15 years of age are placed in the KWEs and KWGs and in foster families, where they are prepared for return. Unaccompanied minor asylum seekers from 15 till 18 have to stay at one of the two AMA-campuses.

The Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers/COA*) is responsible for the reception in the AMA-campus and the daily care. (see also 10, 12). This return-model is now being evaluated by the parties involved, among which Nidos, COA, SRA and the Ministry of Justice. In the integration model the guardian (Nidos) has a juridical role and has to provide for adequate reception for the minor in e.g. a foster home, KWE or KWG.

3.c) How soon after the arrival are they normally appointed?

When an unaccompanied minor asylum seeker enters the Netherlands, they must apply for asylum in the Application Centre (AC). The Immigration and Naturalisation Service (IND) will inform Nidos that an unaccompanied minor asylum seeker has arrived. Children under 12 years of age cannot apply for asylum themselves, because they are not supposed to be able to act independently due to the maturity and age. Asylum can be requested only after the judge has assigned guardianship to Nidos.

However in practice before an official representative of Nidos is appointed: During the accelerated procedure (this has been approved by the judge in appeal) a special representative (not a legal representative/*zaakwaarnemer*) can be appointed to ask for asylum for the child. While waiting for the judge's decision this so-called pre-guardian will look after the child's interests. This is mostly a representative of Nidos. However in some cases this is somebody else like a relative (without legal custody) without any legal background can sign for the asylum request.

After the preliminary interview in the AC or after the accelerated procedure in the AC has finished the Nidos has to be informed again on the whereabouts of the minor and when it is expected that the minor needs a guardian. Nidos will visit the child (if they are younger than 12 years, it will be accommodated by Nidos as well) and send then a final request for guardianship to the cantonal judge and will look whether everything is all right. Within 6 weeks to 3 months Nidos then will be assigned guardianship by the judge.

3.d) What kind of background and expertise do guardians/advisers have?

The guardians are all trained as professional social workers. They have a certain level of higher education which in the Netherlands is called the H.B.O. More specifically, they have all been trained as 'youth protector' (*jeugdbeschermer*). All recognized guardianship institutions have to function under the Youth Assistance Act which lays down quality requirements such as: procedural requirements, for the counselling of minors professionals must be recruited, the right to complaint, and that one must account for methodical work by means of file creation. Guardians will be involved in a continuing education programme of internal courses. There are also regular consultations within the organisation during the period of guardianship. The guardians have not had special pedagogical training. They will ask for assistance from specialised organisations where this is necessary.

3.e) To what extent does this conform to the Statement? Please outline in brief.

The plans that each court appointed guardian will have approximately 45 wards is not in compliance with the best interests of each individual minor. Furthermore the fact that the asylum requests of children under 12 can be signed by someone other than a legal representative is not in compliance with the Statement of Good Practice.

3.f) Are any changes needed? In relation to any first principle?

Guardians should be able to spend more time with their pupils.

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

4.a) Please describe:

All separated children have to put their asylum claims in the registration centre (AC). The asylum procedure consists of an initial interview and a follow-up interview. Just as with adult asylum requests, the first interview is the determination of nationality, identity and travel route. The follow-up interview discusses the grounds for requesting asylum. Since the 4 March 2002, children aged 4-12 are also interviewed on their motives for seeking asylum. For children under 12, the policy is that the first interview is restricted to nationality, essential personal information and the determination of the child's language. For all young people, the first interview takes place in the AC. This first interview is not by a special trained official. After the first interview the Immigration and Naturalisation Service (IND) determines whether the follow-up interview on the motives for seeking asylum will be held in the AC. Children aged 4-12 are interviewed in special interview rooms in Den Bosch and Elspeet, comparable to the rooms used by the juvenile police and the vice squad. However in practice children under 12 are also heard at AC Rijsbergen. The interviewers come over from Den Bosch to hear children at the AC.

Section 3.7.3 of the Kalsbeek policy document states that Article 15(c), first paragraph under (f) of the Aliens Act dealing with aliens without identity papers also applies to asylum seeking minors, unless the alien can convincingly demonstrate that the lack of documentation is not his or her fault (see also 11).

4. b) To what extent does this confirm to the Statement? Please outline in brief.

In practice the preliminary interview does not always take place by someone that has appropriate training or expertise on children. The follow-up interview of unaccompanied minor asylum seekers over 12 years old also do not always take place by someone that has appropriate training or expertise on children. The interview of children under 12 should not take place in the child unfriendly surroundings of the AC. The burden of proof is different for children than for adults; the government is expected to investigate more itself. The IND contact personnel must look for clues that could indicate that the child needs protection; however, this duty of investigation resting on the IND under Article 2, Book 3, General Administrative Law Act, is all too quickly neglected. Additionally, the children are asked very detailed questions (the colour of the airplane, the clothing worn by the crew), and factors such as the child's developmental level, impressionability, imagination and memory are not sufficiently considered. In one example, an eight-year-old was demonstrated because he could not say anything about the death of his father when the child was four, or anything about the period in his life between ages 4 and 6. Furthermore, the report of the initial and follow-up interviews makes it look as though the subject is an adult, and so the degree to which the child's mental and physical development was taken into account cannot be determined.

4.c) Are any changes needed? In relation to any first principle?

- The interviews should take place by appropriate trained persons in a child-friendly way.
- The burden of proof is different for children than for adults; the government (IND) should investigate more itself. The IND could for instance ask for information between the initial and follow-up interview from the supervisors of the child.
- The reports of child-interviews should be different from the reports of adults.

5. AGE ASSESSMENT (SGP: C5)

5.a) Please describe: relevant law and policy in your country

The age assessment is described in the new uma-policy and in C 5/24 of the Alien Circular 2000

In practice at the end of the initial interview in the AC, the IND determines whether the stated age of the asylum seeker that claims to be a minor is questionable. The age boundary of 18 years is very important (in relation to being a minor and being eligible for the normal minor asylum seeker residence permit). With the coming of the new unaccompanied asylum seeking minor policy, the age boundary of 15 is also important. This is the age under which the alien is eligible for the special assistance programme for unaccompanied asylum seeking minors. The burden of proof of age rests with the unaccompanied asylum seeking minor himself. He can make a 'request' for an age examination. If the unaccompanied asylum seeking minor is suspected of not being a minor and the unaccompanied asylum seeking minor does not wish to participate in the examination, then he is treated as an adult. The age examination consists of a bone exam. For the 18-year-old threshold, the collarbone (clavicle) is x-rayed. This exam can establish whether an alien is older or younger than 20 years. For the 15-year-old threshold, an x-ray is taken of the hand and wrist. Based on the maturity of the hand/wrist area, the age of boys and girls can be determined to a certain degree, taking into account ethnic background and socio-economic class, so long as the growth process is not complete. The minimum age at which the growth process could be complete is 14.7 years for girls and 16.0 years for boys. The x-rays are taken in an examination centre in Eindhoven under the auspices of the Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*/

IND). On the basis of these photos, a report for the IND is made by Harry van der Pas, a physical anthropologist at Tilburg University. Mr Van der Pas contracts radiologists for the assessment of the x-rays. A second opinion is allowed. There is an arrangement with the IND that the x-rays are made available for second opinions. The examination can have the result that the indicated age under eighteen is plausible, or that the asylum seeker is an adult. If the asylum seeker turns out to be older than 18 (or, in real terms, 20) then the asylum request is processed in accordance with the normal policy for adults, within the AC if possible. The result of the age investigation is taken into account in the assessment of the credibility of the asylum seeker's account. The result of the age examination can also have the effect that the adult asylum seeker may be placed in alien detention for months because they have lied about their identity.

The radiologists who analyse the photo's work under one number and are therefore anonymous. After a judge has concluded that their identity should be known, when an interested party requests this, they have stopped their cooperation to the age-examinations. There is an unclear situation, where pictures are taken, but no longer analysed. As a consequence at the moment (July-September 2003) also adults (stating they are minors) are placed in the AMA-campus.

5.b) To what extent does this conform to the Statement? Please outline in brief.

- The age examination has been contested for the past 5 years. The IND's methods are being criticised from a variety of angles. The examination has been called ethically and scientifically irresponsible. Recently, the National Ombudsman initiated an investigation (no. 2002/386) of the situation surrounding the examination, and concluded that the collarbone examination (clavicle method) can only determine whether a person is older or younger than the age of 20. Furthermore he considers it incorrect that no medical ethics committee has been appointed. The Minister of Justice has now promised to appoint a committee.
- The UNHCR's Refugee Children Guideline states that if the age of a child is uncertain, the child must be given the benefit of the doubt. In the Netherlands the age-assessment was previously used when there was reasonable doubt about the age of a youngster. However now it seems to be more common to doubt the given age when there are no documents available, than to accept the given age. In more cases, the child must produce proof by undergoing the age-test of his/her age and does not receive the benefit of the doubt. If a child does not know his precise age, this must not influence the substantive assessment of the asylum request.
- When the age-instrument is used more often in unnecessary cases, the issue of x-ray exposure is becoming a topic. The health damage on children may be small, however it is unnecessary. Furthermore there is an unnecessary violation of bodily integrity which is in conflict with provisions of the Convention on the Rights of the Child.

Above mentioned doesn't comply with the Statement of Good Practice.

5.c) Are any changes needed? In relation to any first principle?

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

6. DETENTION (SGP: C6)

6.a) Please describe:

relevant law and policy in your country

- It follows from Alien Circular 2000 A5/1.5 that the starting point of detention of asylum seekers in the Netherlands is that persons younger than 16 are detained as less as possible. Whenever alternative reception is available these must be used.
- Aliens are detained in the Grenshospitium under Article 6, paragraphs 1 and 2, Aliens Act 2000. These provisions give broad authority for the deprivation of liberty of aliens who are not granted access to the Netherlands.

Grenshospitium

The Grenshospitium, in the vicinity of Schiphol Airport, has been in operation since April 1992. The Grenshospitium, literally ‘border hospice,’ is a euphemistic name for what is in reality more of a border prison. This is where aliens arriving at Schiphol airport are locked up, to whom access to the Netherlands is refused and who cannot immediately be deported. The majority of these people are aliens whose asylum request has been denied in the Application Centre at Schiphol. Some of them are still involved in appeal proceedings against this denial. When there are no more appeals, the aliens await deportation to their countries of origin (or another country to which they can be admitted) or transfer to the ‘Dublin country’ which, pursuant to the Dublin Convention³, is responsible for the substantive assessment of the asylum request. In practice a small number of young people who have registered at Schiphol as unaccompanied asylum seeking minors and who are to undergo an age examination for the asylum procedure are also staying here.

NB. Also often very young children have to stay at the Grenshospitium with their families. There is some case-law available where it was decided that when alternative reception is available the detention cannot be used with children: e.g. Administrative Law Division of the Council of State (*Afdeling bestuursrechtspraak Raad van State*), 11 April 2003, nr. 200300822/1.

Application Centres

All children submitting an asylum request (with or without their parents) are held for a number of days at an Application Centre. If this happens at Schiphol, it is generally considered a form of detention that, just as being held at the Grenshospitium, is lawful under Article 6, Aliens Act 2000. Detention in one of the internal ACs (Rijsbergen, Zevenaar and Ter Apel), however, is not justified under any provision of law. For some time there was debate on whether residence in the internal ACs also qualified as deprivation of liberty. The Appeal Court of The Hague ruled on 31 October 2002 that accommodation in the internal ACs must be considered as deprivation of liberty (00/68 KG, NAV 2002/291).⁴ In order to dispel this character of detention, the Minister announced a provisional aliens law policy (*tussentijds bericht vreemdelingencirculaire/TBV*) on 2 December 2002, ‘so that asylum seekers are given the opportunity to leave the ACs when their availability is not necessary for the investigation into the allowability of the application. It is assumed that availability of the asylum seeker remains necessary during working hours [*procedures*] (from 7:30 am to 10:00 pm).’ There has not yet been a court ruling on whether with this new scheme, residence in an AC is indeed no longer qualified as detention.

Departure centres

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

³ The Dublin Convention stipulates that refugees must submit an asylum request in the country in which they first arrive. If they do not do this and then travel on to another country to request asylum, then in principle the asylum request is not processed.

⁴ Incidentally, both parties in these proceedings have appealed this decision in cassation.

expansion to a capacity of 600 persons. Aliens who are expected to be deportable within four weeks will be held in these departure centres, and that may also include families.⁵

Ama-campus (see 3, 10, 12)

In the beginning of the experiment of the Return-model for unaccompanied minor asylum seekers aged 15 and over there has been a lot of tension between providing protection to the youngsters and the restriction of their freedom of movement. At first the unaccompanied minor asylum seekers were not allowed to leave the campus at all. They were practically deprived of their liberty without any legal base. After protests of the unaccompanied minor asylum seekers themselves and a law-suit that was instigated by some organisations (among which Defence for Children International Netherlands and the Dutch Refugee Council) the unaccompanied minor asylum seekers are now able to leave the campus. On 23 April 2003, the Preliminary Relief Judge in preliminary relief proceedings⁶ concluded that there are insufficient options offered to the young people for free choice recreational activities. According to the court, this violates Article 31 (leisure, recreation and cultural activities), CRC.

6.b) To what extent does this conform to the Statement? Please outline in brief.

Dutch practice in relation to detention is not in compliance with the Statement of Good Practice.

6.c) Are any changes needed? In relation to any first principle?

In relation to the first principle, separated children and young adults, should not be held in detention centres. Young people should be sent to reception centres or to special care centres where the further procedure can be prepared. If necessary, age can be verified using the age assessment.

7. RIGHT TO PARTICIPATE (SGP: C7) (see also the appendix on participation at the end of this document)

7.a) Please describe:

With the introduction of the new uma-policy children it is prescribed that children up from the age of 4 years old have to be heard directly by the IND (see also 1a). The option for a child to be interviewed has more or less changed into an obligation.

7.b) To what extent does this conform to the Statement? Please outline in brief.

Organisations claim that in contrast to what is stated in the new policy document, namely that the interview is used to search for starting points for further investigation, more often the reality is that the decisions note that the interview subjects did not cooperate sufficiently, made implausible statements, etc. This is in stark contrast to the child's interest in careful preparation for the best decision possible. This decision should consist of either allowing the child to remain in the Netherlands legally or returning the child to adequate care in the country of origin (see also 1 b).

7.c) Are any changes needed? In relation to any first principle?

- Interpret children's opinions consistently in the asylum procedure.
- If underage asylum seeking minors request for asylum on their own it would be best if the guardian contributes information on behalf of the young child after a period of rest and acclimatisation of this child. If a minor asylum seeker is accompanied by sibling(s), the

⁵ Based on a letter from the Minister for Aliens Affairs and Immigration, 20 December 2003 (Lower House 28 600 VI, no. 120) and supplemental information from the Dutch Refugee Council in May 2003.

⁶ KG 03/284.

oldest sibling should be interviewed only, with the option for the guardian to contribute information on behalf of the young child.

- Children should be interviewed by specialised staff who can take into account the mental and physical development of the child.
- Children have to little a voice in their own living circumstances. They are not listened to enough about their ideas before and during the (placement in) reception.

8. FAMILY TRACING & CONTACT (SGP: C8)

8.a) Please describe:

With the introduction of the new uma-policy in 2001 the term of adequate care in the country of origin has been broadened by the Dutch government. Adequate care is presumed to be available in more situations now.

In practice the Ministry of Foreign Affairs uses official country reports to classify countries as safe or unsafe and to make the determination of whether there is adequate care there or not. With the introduction of the new policy an asylum request is rejected when ‘adequate reception’ is available. Adequate reception means:⁷

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

During the asylum request there is a general check for adequate care as described above. If the return actually takes place there is an extra check whether adequate care for the individual minor is available. During the judgement by the IND on the asylum request, the Dutch government assumes (see IND working instruction number 245A) that there is always adequate care available in China, unless the child provides proof that this is not a fact in his/her special case (in practice this is not easily accepted). With regard to expulsion policy, the working instruction states that, in the return phase, no investigation needs to be carried out into a specific care organization in China, since the official country report of 9 April 2001 states that the Chinese authorities will provide for the care of unaccompanied minors. According to the Dutch government, there is also adequate care by default in orphanages in Sri Lanka, Turkey and Algeria. Children originating from these countries are not eligible for a residence permit under the unaccompanied asylum seeking minor policy. The Netherlands is also working on concluding special return agreements with other countries, such as Angola. An orphanage has been built in Angola financed by the Dutch Government (see also 12v). In practice at the moment there are only 20 places and the prediction is that the minors will only stay here as a stop-over. If an unaccompanied minor asylum seeker of 16 years and over says he/she has a family, the AMV-permit can be refused without further investigation.

⁷ Lower House, 2002-2003, 27 062, no. 23, p. 1.

At the request of a minor (and with the permission of his guardian) the Dutch Red Cross and the International Red Cross also investigate whether a minor has parents or other family members. Minors can complete questionnaires providing information about their parents and other family members that they are looking for. The investigation procedure will then be put in progress. Most minors do not take advantage of this procedure. This might be the case because their parents have sent them to the Netherlands, believing that they will have a better future there and they have failed if coming back. Contact between the minor and his parents could lead to the IND concluding that the minor should be deported to his country of origin and be reunited with his parents. The IND and the Dutch Red Cross do not work together.

8.b) To what extent does this conform to the Statement? Please outline in brief.

- Co-operation between the government and NGO's does not meet the requirements of the Statement of Good Practice.
- The options of return should be discussed with each individual child, you cannot reject an asylum request because in a country there is general adequate care in the form of one orphanage.
- A minor of 16 years old and over who tells to have family in his country of origin should not be rejected a AMV-permit without further investigation.

8.c) Are any changes needed? In relation to any first principle?

- Investigate the options for return, in cooperation with the child, before sending the child back.
- Better co-operation between government and NGO's in searching for adequate care.
- A minor of 16 years old and over who tells to have family in his country of origin should not be rejected a AMV-permit without further investigation

9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY (SGP: C9)

9.a) Please describe:

relevant law and policy in your country:

If the unaccompanied minor in the Netherlands has a family member in another EU country with a refugee status than the country where this family member resides is responsible for the asylum request of the minor. In September 2003 the Dublin Regulation will come in force. Article 6 of this Regulation states that when the asylum seekers is an unaccompanied minor the responsibility of the asylum procedure is for the Member State where the family member legally resides, if this is in the best interest of the minor in question. The Dutch jurisprudence has been interpreting the Dublin Convention (Regulation 1/2000) to narrow. Siblings should be seen as a family and should not be separated. However this seems to be evaluating in the Netherlands at the moment.

9.b) To what extent does this conform to the Statement? Please outline in brief.

It is not in compliance with the Statement of Good Practice that siblings are in the Netherlands not (yet) treated as a family in order to – if this is in the best interest of the child - reunite them.

9.c) Are any changes needed? In relation to any first principle?

- Siblings should be seen as a family and should not be separated.

10. INTERIM CARE - HEALTH - EDUCATION - TRAINING (SGP: C10)

Interim Care (SGP: C10.1):

10.a) Please describe: (see also 3, 6, 12)

With the introduction of the new unaccompanied asylum seeking minor policy, a new reception model has been implemented. This reception model is linked to an integration model and a return model. After a basic period (six to nine months), minors expected to remain in the Netherlands for longer than 3 years (with a asylum permit or an AMV-permit) are placed in the integration model. These minors are placed in (small living units (KWEs), small living groups (KWGs) and in foster families. Where they are prepared to live in Dutch society. Nidos is responsible for selecting and placing children in the integration model. (see also 3).

Those not expected to remain in the Netherlands for longer than three years are placed in the return model, in which preparation for return is the main emphasis. Unaccompanied asylum seeking minors younger than 15 years of age are placed in one of the 8 return experiments that are taking place in KWEs and KWGs and in foster families, where they are prepared for return. Unaccompanied minor asylum seekers from 15 to 18 have to stay at the new AMA-campuses in Vught of in Deelen. The COA is responsible for the reception in the AMA-campus. (see also 3) A relatively big amount of separated children are still in the asylum procedure while placed in the AMA-campus.

The reception centre Valentijn (in Elspeet) that provided special care for separated mothers with babies and siblings is closed from 1 September 2003. Children who stayed here will be placed in OC Eindhoven (if one of them is older than 15 years of age) or in KWE's or KWG's (if they are all younger than 15 years of age).

Contrary to the previous situation the placement in follow-up care by Nidos is at this moment (September 2003) no longer difficult because of the decreasing number of separated children in the Netherlands. As a consequence a lot of minors could be placed from the central reception to reception in the living units (kwe) or the family care. However if the climb down of asylum centres is getting worse, this might effect again the placement of separated children.

10.b) To what extent does this conform to the Statement? Please outline in brief.

In accordance with the Statement of Good Practise, there are specific provisions for unaccompanied minors.

- The basis of the reception should be the best development of the child. However the basis of the reception at the moment is big-scaled reception.
- Problems occur in the new Return Model because the minors aged 15-18 feel like they're being detained and isolated from the Dutch society. The situation has escalated several times. As a consequence safety can no longer be guaranteed. Of all young people ever placed on the campus until April 2003, 27 (over 20%) departed for unknown destinations (*met onbekende bestemming*, or MOB).⁸
- The quality of the reception provided to unaccompanied asylum seeking minors in the various facilities the Asylum Centres (AZCs), first reception centres (OCs), KWEs, KWGs has continually been the source of comment and complaint. More and more unaccompanied young people are being received in asylum seeker centres, which are set up for adults or families with children. These centres have no form of pedagogic supervision at all. Additionally, in the small residential units there are too few mentor hours available.

10.c) Are any changes needed? In relation to any first principle?

- Minors who haven't had their follow-up interview should not be placed in the return model.
- A serious and systematic analysis of the reception policy should be conducted.

⁸ Document containing figures on unaccompanied asylum seeking minor campuses (received by e-mail), Wilma Lozowski of the Dutch Refugee Council, 7 April 2003.

- The best interests of the child are not served if a child in a position of vulnerability is placed in a large group outside of society, without privacy and without individual attention. Therefore the experiment of the Return model must be reviewed.
- Teen-moms with babies need special care.
- Vulnerable minors should not be placed with adults.

Health (SGP: C 10.2)

10.d) Please describe (see previous report):

- The Pharos Foundation for Refugee Health Care has turned into a knowledge centre for refugees and health care. This centre offers care in the third degree (*derde-lijns zorg*).
- The Medical Reception of Asylum seekers has been reorganised and falls under the Mental Health Care Organisation (*Geestelijke gezondheidszorg/ GGD*) now.
- Care takers of the Mental Health Care Organisation wonder how the access to the Mental Health Care will be organised at the AMA-campus. They wonder how they are supposed to build a relationship with the minor that is based on reliance, when the minor is isolated in the campus. They wonder whether they will be called for only in crisis situations or also preventively. At the moment it not clear how this will turn out to be in the future.
- The youth care for unaccompanied minor asylum seekers does not seem to be accessible enough. They are referred to other organisations in many cases.
- The help that is offered by dentists is only provided when this is acute necessary. There is no complete dental supply for unaccompanied minor asylum seekers.
- Children often have to move from one AZC/OC to another. This is a disadvantage for the preventive health care.

10.e) To what extent does this conform to the Statement? Please outline in brief.

Separated children do not receive the same medical help like other children get. This does not conform to the Statement of Good Practise.

10.f) Are any changes needed? In relation to any first principle?

- Children shouldn't have to move so often.
- Unaccompanied minor asylum seekers should be offered the same possibilities in health care as all Dutch children.

Education, Language and Training (SGP: C 10.3)

10.g) Please describe:

See previous report for the education that is given in the integration model.

The return-model: The AMA-campus is a relatively 'closed' system, where the unaccompanied minor asylum seekers aged 15-18 are being isolated from Dutch society. The campus model provides for an intensive and full programme each day. The education at Campus Deelen and Vught is organised by the local schools in the neighbourhood of the campuses. The unaccompanied asylum seeking minors' education consists of two hours of English lessons and a few hours of sports per day. The education is focused on return. The English language is taught. At first Dutch language was not taught at the campus. However due to protests of the children, two hours of Dutch language is now (since August 2003) provided at the Campus in Vught. The knowledge of the language of the host country is important for the social well-being of the child. If they want to buy something in a shop et cetera.

Valentijn is going to be closed (see also 10a)

10.h) To what extent does this conform to the Statement? Please outline in brief.

- The insecure situation influences the educational achievements of the children in a negative manner.
- (See also previous report)

10.i) Are any changes needed? In relation to any first principle?

- The insecure situation is bad for children's educational achievements. Almost 8.000 separated children are waiting for the decision in appeal.
- See also the previous report.

11. REFUGEE DETERMINATION PROCESS (SGP: C 11)

Access to normal procedures (SGP: C11.1)

11.a) Please describe:

Each separated child can apply for asylum in the Netherlands. All children in practice go into the asylum system. The asylum procedure is roughly the same for minors as for adults. However the outcome can be different. If it is ruled that the minor has no asylum grounds (this is very often the case), the special policy for unaccompanied asylum seeking minors applies. The policy states that account should be taken with the age and capacity of the minor. However in practice this this does not seem to be the case.

The accelerated procedure (*Aanmeldcentra-procedure/AC-procedure*) was introduced in 1994 with the object of weeding out the manifestly unfounded asylum requests from those requiring further investigation. With the introduction of the **Aliens Act 2000**, there is no longer any essential criterion on the basis of which it can be determined whether or not an asylum request can be resolved in the Application Centre (AC). The only criterion left is the question whether the case can be processed with due care within 48 processing hours. With the introduction of the new **unaccompanied asylum seeking minor policy** in 2001, even the exception that the requests of unaccompanied asylum seeking minors cannot normally be processed through the AC-procedure has been abandoned. All unaccompanied asylum seeking minors, regardless of age, must now submit the asylum request in an AC. There are four ACs where the asylum request can be submitted: AC Rijsbergen (on the Belgian border) , AC Zevenaar (on the German border), AC Ter Apel (Northeast region) and AC Schiphol (upon arrival at Schiphol Airport). There are however plans in future to deal with asylum claims of separated children only in the Accelerated Center in Rijsbergen.

In practise despite the criticism from numerous sources, including the United Nations High Commissioner for Refugees (UNHCR),⁹ that have been expressed on the processing of the asylum requests of children in the accelerated procedure, there is a noticeable tendency to completely process not only more adult asylum requests in the AC procedure, but more requests of children as well. At the end of 2002 a relatively large amount of the asylum requests of asylum seekers claiming to be unaccompanied asylum seeking minors upon arrival were processed in the AC. All separated children have to put their asylum claims in the registration centre (AC). The asylum procedure consists of an initial interview and a follow-up interview (see also 11m). Since the 4 March 2002, children aged 4-12 are also interviewed. For all young people, the first interview takes place in the AC. The child may also have to undergo a nationality check, a language analysis and an age examination. After the first interview, the Immigration and Naturalisation Service (IND) determines whether the follow-up interview on the motives for seeking asylum will be held in the AC. Children aged 4-12

⁹ In a letter to the Lower House, 11 June 2001, in a response to the letter of State Secretary Kalsbeek, 1 May 2001. In this letter the UNHCR expresses its concerns about the AC procedure. This criticism was dismissed by the former State Secretary in the debate (Lower House 2000-2001, 27062, no. 16) with the statement that '*the UNHCR guidelines are applied in full.*'

are interviewed in special interview rooms in Den Bosch and Elspeet, comparable to the rooms used by the juvenile police and the vice squad.

Rules relating to safe countries of origin, safe third countries and the Dublin Convention are being applied now to the separated children. It follows from the Alien Circular C2/7 3.1 that the agreement of Dublin will also comply to asylum seekers that claim to be unaccompanied minor asylum seekers. Previously unaccompanied minor asylum seekers did not fall under the Dublin agreement. However with the introduction of the new policy unaccompanied minor asylum seekers that have entered the Netherlands after having entered another country have to go back to the country of first entrance.

Finally unaccompanied minor asylum seekers that are waiting for a follow-up interview in the *uma-campus* (because their case might be approved and can not be finished during the AC-procedure) are already prepared for their return to their home-country. This is despite the fact that they have not yet been interviewed on the asylum motives.

11.b) To what extent does this conform to the Statement? Please outline in brief.

- The AC procedure by its nature is unlikely to ensure that unaccompanied children's special characteristics and needs are taken into account.
- Children no longer have a rest period of four weeks before the follow-up interview on their motives for seeking asylum is held.
- Unaccompanied minor asylum seekers should not be prepared to return to their home countries as long as they haven't got the follow-up interview and a negative decision of the IND. The situation now influences the follow-up interviews of the youngsters, because they think they don't have a chance to stay anyway.
- The burden of proof is different for children than for adults; the government (IND) should investigate more itself. The IND could for instance ask for information between the initial and follow-up interview from the supervisors of the child.

The abovementioned does not comply with the Statement of Good Practice.

11.c) Are any changes needed? In relation to any first principle?

- Do not process the asylum requests of minors within 48 hours at the reporting office. They should first be afforded some time to rest in order to acclimatise.

Legal Representation (SGP: C 11.2)

11.d) Please describe:

Unaccompanied minors receive free legal assistance with their asylum application. In principle, the Asylum Seekers Legal Advice Centre (*Stichting Rechtsbijstand Asielzoekers/SRA*) will prepare each minor for the asylum procedure. The Asylum Seekers Legal Advice Centre also resides at the Application Centres and prepares the minor for the preliminary and follow-up interview. Unaccompanied minors also get free legal representation during their appeal during higher appeal procedures.

In practice because there is a complementary AMV-permit, asylum grounds are hardly ever accepted. A lot of unaccompanied minor asylum seekers go in appeal against this decision. The amount of unaccompanied minor asylum seekers waiting for the (outcome of their) appeal is decreasing at the moment. At the moment approximately 8.000 unaccompanied minor asylum seekers are waiting for the appeal.

11.e) To what extent does this conform to the Statement? Please outline in brief.

The Statement of Good Practice is sufficiently complied with in this area. However the accelerated procedure in the AC is characterised by much shorter preparation periods (2 hours) for the initial and follow-up interviews, and a response time of only 3 hours for giving

a motivation for the intention to reject the asylum request and make corrections on the report of the interview. It is questionable whether there is enough time for children to prepare themselves with the time pressure of the AC-procedure, for the follow-up interview. The normal procedure allows more leeway. Furthermore a child's counsellor is not allowed to be present in the interview room. The SRA-staff at the Accelerated Centre are not trained in working with young children.

11.f) Are any changes needed? In relation to any first principle?

- The children must be properly prepared for their asylum interviews.
- During the asylum interviews, a counsellor who can adequately support the child must be present.
- During the Accelerated Procedure the child is approached by a lot of different people e.g. legal aid, IND, lawyer, Nidos. Sometimes the child has to deal with over 5 different people. This might be very confusing for the child.

Minimal Procedural Guarantees (SGP: C 11.3)

11.g) Please describe:

The IND is responsible for taking a decision on an unaccompanied minor's application. The IND forms part of the Ministry of Justice and is responsible for the asylum procedure. Two IND officers are involved in the decision making process. One conducts the interview and make a report; the other takes the decision. Both officers receive training in asylum and refugee law. The IND officer conducting in the preliminary hearing at the application centre is not always specialised in interviewing children. There is a noticeable tendency to completely process more requests of children within the accelerated procedure (see 11a). This means that the decision is taken within 48 hours. This shortens the previous lengthy asylum procedure.

However in other cases the appeals procedure still takes a long time before the decision is taken (see previous report). It takes a long time before a decision is taken on the negative decision of an AMA-VTV.

Unaccompanied minor asylum seekers have the right, with legal assistance, to challenge a decision of the Ministry. In the asylum procedure there is the right to lodge an appeal and a higher appeal. In case of the (regular) uma-procedure there is the right to appeal and higher appeal and the right to lodge an objection.

Since April 2001, with the introduction of the Aliens Act 2000, the Council of State's Administrative Law Division (hereinafter: the Division) is the court competent for appeals on aliens affairs, making the Division the highest national court in alien affairs. As a consequence the appeals procedure is shortened.

11.h) To what extent does this conform to the Statement? Please outline in brief.

- It is questionable whether the decision taken within the 48-hours procedure is taken with enough attention and care for the possible asylum and refugee matters that can concern these children. It is good however that attempts are made to speed the procedure up. However this may not mean that the procedure is no longer thorough.

11.i) Are any changes needed? In relation to any first principle?

- Do not process the asylum requests of minors within 48 hours in the accelerated procedure. They should first be allowed some time to rest in order to acclimatise.

Independent Assessment (SGP: C 11.4)

11.j) Please describe relevant law, policy and practice in your country:

Employees of the SRA and asylum lawyers (see also 11 d) will help the child to articulate fear of prosecution or other reasons why he had to leave his homeland.

Previously children under 12 years old weren't heard. Children aged 4-12 are heard now with introduction of new una-policy. The SRA and the asylum lawyers are independent. When the guardian Foundation Nidos thinks that a unaccompanied minor asylum seeker cannot be heard for the follow-up interview the guardian can get in contact with the IND officer.

11.k) To what extent does this conform to the Statement? Please outline in brief.

It corresponds to the Statement of Good Practice that children are helped by a trained, independent person.

11.l) Are any changes needed? In relation to any first principle?

- The preparation periods are too short. The children must be properly prepared for their asylum interviews.
- The lawyer or legal aid should be appointed to the child under the age of 12 before the follow-up interview is initiated.

Interviews (SGP: C 11.5)

11.m) Please describe: relevant law and policy in your country

The asylum procedure consists of an initial interview and a follow-up interview. Just as with adult asylum requests, the first interview is the determination of nationality, identity and travel route. The follow-up interview discusses the grounds for requesting asylum. Since the introduction of the new policy, children aged 4-12 are also interviewed on their motives for seeking asylum. For children under 12, the policy is that the first interview is restricted to nationality, essential personal information and the determination of the child's language. For all young people, the first interview takes place in the AC. After the first interview, the Immigration and Naturalisation Service (IND) determines whether the follow-up interview on the motives for seeking asylum will be held in the AC or in the reception centre (see 3b and 10) where the child is staying (in case of an asylum request that has a great chance to be granted).

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

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

In practice despite the fact that the contact officials (outside the AC) do their very best to treat the children as pleasantly as possible, there are complaints that some questions are too confrontational, too direct or too far-reaching and that there is a lack of cultural communication. Where children older than 12 years of age are subject to the accelerated asylum procedure two interviews are held with officials who have received no special training

in hearings involving children. In such case separated children are in fact being treated as if they were adults.

11.n) To what extent does this conform to the Statement? Please outline in brief.

- In the accelerated procedure the interviews of children aged 12 and older do not take place in a child-friendly atmosphere. The AC is an environment that allows insufficient opportunities for young people to tell their story.
- The interviews are used by the IND to attempt to uncover contradictions in the child's own statements or those of his older brothers or sisters. During the interviews, doubts are openly expressed about what the child says.

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

(Source: HRW, 2003)

- For young people who have been through devastating experiences, it is often impossible to relate their accounts within the time frame of the AC procedure.

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

(Source: case file of asylum lawyer Gerda Later)

11.o) Are any changes needed? In relation to any first principle?

- The burden of proof is different for children than for adults; the government (IND) should investigate more itself. The IND could for instance ask for information between the initial and follow-up interview from the supervisors of the child.
- Furthermore guarantees should be given that all officials involved in hearing children's cases receive special training. This should apply also to officials who register children at the AC. Particular attention should be paid to asking questions that are tailored to the child's developmental level and experience. It should also be established that legal aid providers are also able (trained) in working with young children.

Criteria for making a decision on a child's asylum application (SGP: C 11.6)

11.p) Please describe:

It follows explicit from paragraph 4.6 of the new uma-policy that lying (*jokkende*) and silent (*zwijgende*) unaccompanied minor asylum seekers will not receive a permit to stay on grounds of the uma-policy. In short: unaccompanied minor asylum seekers who frustrate possible research to reception possibilities in the country of origin, even under 15, will be refused a residence permit. Furthermore section 3.7.3 of the Kalsbeek policy document states that Article 31, part 2 (f), first paragraph under (f) of the Aliens Act when dealing with aliens without identity/travel and other documents effecting the asylum request also applies to asylum seeking minors, unless the alien can convincingly demonstrate that the lack of documentation

is not his or her fault. As a consequence of the minority they will receive reception in the Return Model (see 3b and 10).

In practice the interviews are used by the IND to attempt to uncover contradictions in the child's own statements or those of his older brothers or sisters. Furthermore, a child's lack of documentation may be used against him, and/or the IND may attempt to discover personal information about adults in the Netherlands who could be responsible for the return of the child on the basis of the unaccompanied asylum seeking minor policy (see also 1). No guidelines have been produced for conducting children's initial interviews. In principle, the same standard text for adult decisions is also used for children. As a consequence it is not clear that it involves a minor. Minors have to comply with the same demands as adults in case of e.g. the traumata-policy (e.g. that they must have left their country within 6 months after the trauma took place). This is in contrast to what is stated in the Kalsbeek policy document, namely that the interview is used to search for starting points for further investigation, more often the reality is that the decisions note that the interview subjects did not cooperate sufficiently, made implausible statements, etc. This is in stark contrast to the child's interest in careful preparation for the best decision possible. This decision should consist of either allowing the child to remain in the Netherlands legally or returning the child to adequate care in the country of origin. The option to interview children under the age of 12 has been changed into an obligation. The child's development and maturity is not sufficiently taken into account. Because of the complementary AMV-permit, to often asylum-claims (on humanitarian grounds/traumata-policy) of the child are rejected.

11.q) To what extent does this conform to the Statement? Please outline in brief.

- Little account is taken with the age and maturity of young children in the interpretation of the interviews before a decision is taken by the IND.

For example, IND interview reports have stated:

"I have never possessed an authentic passport in my own name." (a four-year-old)

"I have never been married and apart from the aforementioned documents I am not in the possession of other documents with which I can substantiate the account of my journey" (a nine-year-old)

(Source: Lozowski, 2003)

The UNHCR guidelines are not followed as strictly as they should be.

11.r) Are any changes needed? In relation to any first principle?

There are many different reasons why children are silent or are not telling the truth. They might be afraid for smugglers who told them to lie; they might be too young to tell a consistent story; they might need more time to acclimatise etc. More account should be taken of the age, majority and situation of the children. It is not in compliance with the UNHCR Guidelines to withhold these children a residence permit purely because of the fact their stories are not consistent. There should be special attention and caution should be practiced when children for instance come from a war situation, and there is a strong assumption of a trauma (see also 12a).

Young People who become adults during the asylum process (SGP: C 11.7)

11.s) Please describe:

Under the previous policy, continued residence after holding a VTV-AMA for 3 years was generally the rule rather than the exception. Only if adequate care was found in the country of origin within 3 years was return possible, and in practice, this rarely happened. Now, an unaccompanied asylum seeking minor can be given a permit for continued residence if he has held a VTV-AMA for three years before he turns eighteen. This makes being granted an asylum status more important. It also follows from the new unaccompanied asylum seeking minor policy that protection is only given to the unaccompanied asylum seeking minor until

he reaches the age of 18, and only if necessary. Unaccompanied asylum seeking minors who are still in the procedure retain their benefits. On 15 September 2002, the scheme for the termination of financing of rejected unaccompanied asylum seeking minors/ex-unaccompanied asylum seeking minors became effective. This scheme prescribes that young people 18 years of age and older must arrange for their departure within a term of 28 days after being given notice of obligatory departure. After the expiry of this 28-day term, the asylum seeker's benefits (reception, follow-up accommodations, NIDOS care and spending money allowance) are discontinued, even though it is usually impossible (even if the asylum seeker is cooperating) to obtain the required travel documents in such a short amount of time.

There are approximately 2,000 unaccompanied asylum seeking minors still falling under the former policy and they are being requested to come to the office of the local Aliens Police for a departure consultation, after which, for them too, the spending money allowance ends following a 28-day period. On 27 February 2003, the District Court of Haarlem¹⁰ ruled on an objection lodged by an ex-unaccompanied asylum seeking minor due to the termination of the spending money allowance. In that case, the court ruled that the lack of review of the cooperation principle was wrongful. The cooperation principle entails that someone who can show that he has done everything in his power to obtain travel documents must not be expelled from the reception programme. The cooperation principle is an element of Plan III, which applies to adult asylum seekers. Since this plan is applied to adult asylum seekers and not ex-unaccompanied asylum seeking minors, there is an issue of legal inequality. If, however, this cooperation is refused, immediate measures can be taken. As a result of the discontinuation of the benefits, ex-unaccompanied asylum seeking minors can face financial and social problems and an interruption of their studies, causing them to drop out of sight. When this happens there are risks of criminal behaviour and prostitution.

11.t) To what extent does this conform to the Statement? Please outline in brief.

This does not comply with the Statement in which is stated that young people should be treated in a more generous fashion.

11.u) Are any changes needed? In relation to any first principle?

In fact the VTV-AMA only provides for protection to the unaccompanied asylum seeking minor until he reaches the age of 18, and only if necessary. Furthermore unaccompanied minor asylum seekers who haven't stayed in the Netherlands for 3 years before they turn 18 have to leave the Netherlands within 28-days. This should change, young people should be treated more gently.

12. DURABLE SOLUTIONS (SGP: C 12)

Remaining in a Host Country or Country of Asylum (SGP: C 12.1)

Grounds for a child remaining in a host country (SGP: C 12.1)

12.a) Please describe:

An alien (including separated children):

- (a) who is a refugee under the terms of the Convention;
- (b) who makes a plausible case that he has good grounds for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment;
- (c) who cannot, for pressing reasons of a humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the Minister, to return to his country of origin;

¹⁰ AWB 02/90709.

(d) for whom return to the country of origin would, in the opinion of Our Minister, constitute an exceptional hardship in connection with the overall situation there; can be granted an asylum status. This permit is valid for a fixed period. After three years the child can apply for a permit for an indefinite period.

VTV-AMA: Special type of permit to stay which may be granted to separated children who do not qualify for the above mentioned status. In assessing whether an unaccompanied is entitled to residence in the Netherlands, the self-sufficiency and adequate care of the child are examined. The term adequate care has been broadened (see also 8).

In practice under the previous policy, continued residence after holding a VTV-AMA for 3 years was generally the rule rather than the exception. Only if adequate care was found in the country of origin within 3 years was return possible, and in practice, this rarely happened. Now, an unaccompanied asylum seeking minor can be given a permit for continued residence if he has held a VTV-AMA for three years before he turns eighteen. This makes being granted an asylum status more important. However it is in practice still only a small group of children who are granted a refugee status or a permit to stay on humanitarian grounds. E.g. no special account is taken with the fact that children can experience a trauma different for instance earlier than adults do. For instance if a child sees one of his/her family-members being murdered this can have a traumatising effect on this child.

12.b) To what extent does this conform to the Statement? Please outline in brief.

The Dutch situation complies with the Statement to the extent that a separated child can stay on grounds mentioned above. However, in practice it seems that few children are considered refugees or are allowed to stay on humanitarian grounds. The same standards are used by the IND in the decisionmaking-process for adults as for children, e.g. in deciding whether a person is traumatised.

12.c) Are any changes needed? In relation to any first principle?

The authorities should look more seriously to see whether an separated child can be granted a permit to stay on asylum grounds. Especially now the VTV-AMA no longer provides a right to stay when a minor has stayed in the Netherlands shorter than 3 years before turning 18. Furthermore the standards in deciding whether a person is traumatised should be more extended for children, for instance for children that come from a war situation.

Family Reunification in a Host Country (SGP: C 12.1.2)

12.d) Please describe: (see also the appendix on migrant children at the end of this document)

With the entry into force of the Aliens Act 2000 on 1 April 2001, much has changed in the field of family reunification. For the first time, the law of family reunification is set out in the act itself. The right to family reunification and family formation is codified in the Aliens Act 2000 in Article 15 (family reunification and family formation for normal aliens), Article 29, paragraph 1(e) and (f) (application for permanent residence permit for spouses and minor children of refugees, not family formation), and other articles. Article 29, paragraphs 1(e) and (f), entail that to be eligible for asylum-related family reunification, the family must have joined the applicant within three months, otherwise the policy for normal aliens applies. Along with the Aliens Act 2000, a new Aliens Decree 2000, new Regulations on Aliens and new Aliens Act Implementation Guidelines have also become effective. Furthermore a policy paper on the application of the 'factual family relationship' criterion for the admission of minor children (hereinafter: Factual Family Relationship policy paper) was ultimately published in October 2001.¹¹ This policy paper applies to normal family

¹¹ Provisional Aliens Policy Decision (*Tussentijds Bericht Vreemdelingenbeleid* or 'TBV') 2002/4, Bulletin of Acts and Orders 22/03/2002, no. 58.

reunification and not to asylum-related family reunification. Asylum-related family reunifications will be very closely scrutinised indeed for whether the family members are actually relatives of the principal person, and DNA tests will be requested on occasion. The Factual Family Relationship Policy Paper states that with regard to the initial admission of minor children, along with the general requirements such as the financial resources requirement, there is also the requirement that the 'factual family relationship' must remain unbroken and that this relationship must already have existed in the country of origin.¹² The Factual Family Relationship Policy Paper allows a maximum term of 5 years in which a parent or parents must submit a request for family reunification, and the concept of factual family relationship is considered to be intact so long as the parent and child have been separated for less than five years. After this five-year period the actual family relationship is, in principle, considered broken.

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

All aliens except asylum seekers and citizens of the EU must pay fees for applying and obtaining residence permits. The Dutch government has implemented two fee increases within the space of a year. The first fee increase took place in May 2002. As of January 2003, after the second fee increase, a family of two parents with two children over 12 and one child under 12 must now pay a total of EUR 2,005 for the initial residence permits. Each extension will cost that family EUR 1,425, even if the application is rejected.

12.e) To what extent does this conform to the Statement? Please outline in brief.

Dutch policy concerning the reunification of unaccompanied minors and their parents in the Netherlands does not comply with the Statement of Good Practise. Severe criteria are set out by the Dutch government under the new policy on eligibility for family reunification. Although the policy paper was intended to relax the rules on family reunification, it is actually more restrictive on a number of points. Compared to the policy in other European countries, the Dutch policy is worse in a number of areas:

- The costs associated with family reunification are too high;
- to fall under the asylum-related family reunification, an asylumseeker or his/her child should follow within 3 months after the request for asylum. This follow-on travel period is much too short
- the burden of proof for the family is too heavy;
- After the 5-year period the factual family relationship criterion is considered to be broken, it is hard to prove differently;
- The Dutch translation of Article 10 of the CRC is wrongly translated and as a consequence less positive than what the Convention advocates.
- There are plans that the age of reunification should no longer be 18, but lowered. It is argued that younger children have more opportunities to integrate in a new society, and older children already are integrated in the other country.

12.f) Are any changes needed? In relation to any first principle?

- Adjust the high fees.
- Extend the follow-on travel period for family reunification.

¹² Aliens Act Implementation Guidelines 2000 B2/6.4.

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

Integration (SGP: C 12.1.3)

12.g) Please describe: (see also 3, 6,10)

With the introduction of the new unaccompanied asylum seeking minor policy, a new reception model has been implemented. This new reception model is linked to an integration model and a return model. After a basic period (six to nine months), minors expected to remain in the Netherlands for longer than 3 years are placed in the **integration model**. These minors are placed in, KWEs and KWGs and in foster families. Where they are prepared to live in Dutch society. Those not expected to remain in the Netherlands for longer than three years are placed in the return model, in which preparation for return is the main emphasis. There is **no integration** into Dutch society. Unaccompanied asylum seeking minors younger than 15 years of age are placed in the KWEs and KWGs and in foster families, where they are prepared for return. Unaccompanied minor asylum seekers from 15 till 18 have to stay at the AMA-campus. There are two campuses, one in Vught (since November 2002) and one in Deelen.

In the beginning of the experiment of the Return-model for unaccompanied minor asylum seekers aged 15 and over there has been a lot of tension between providing protection to the youngsters and the restriction of their freedom of movement. At first the unaccompanied minor asylum seekers were not allowed to leave the campus at all. They were practically deprived of their liberty without any legal base. After protests of the unaccompanied minor asylum seekers themselves and a law-suite that was instigated by some organisations (among which Defence for Children International Netherlands and the Dutch Refugee Council) the unaccompanied minor asylum seekers are now able to leave the campus. On 23 April 2003, the Preliminary Relief Judge in preliminary relief proceedings¹³ concluded that there are insufficient options offered to the young people for free choice recreational activities. According to the court, this violates Article 31 (leisure, recreation and cultural activities), CRC.

The official language on the campuses is English. The languages of the countries of origin may also be spoken. The campus model provides an intensive and full programme each day.

E.g. in the period from 11 November 2002 until 6 April 2003 approximately 131 youngsters were placed in the campuses in Vught and Deelen. Eighty-nine of them (68% of the total) were still in the asylum procedure. These children already have been prepared to return to their country of origin where it is not even sure that they have to return. They cannot integrate into Dutch society for 6-9 months.

The Foreign Nationals Employment Act (*Wet Arbeid Vreemdelingen/ WAV*) has been extended and entered into force on the 26 June 2002. As a consequence asylum seekers are allowed to do any kind of work. However the limitation of a maximum of 12 weeks a year remains in force. It is not clear how this permission to work relates to the AMA-campus as well. Due to all kinds of rules it isn't possible for an unaccompanied minor asylum seeker to work, like Dutch youngsters in weekends or holidays.

12.h) To what extent does this conform to the Statement? Please outline in brief.

¹³ KG 03/284.

It is unacceptable that there are young people at the campus who do not belong there. As already stated, a relative large amount of the young people on the unaccompanied asylum seeking minor campuses are still in the asylum procedure and are already being prepared for return. This youth belongs in the integration model.

12.i) Are any changes needed? In relation to any first principle?

- The Return model should be less isolated from society.
- Separated children in the Integration model should be allowed to work as this is also allowed to Dutch children.
- Minors that are still in the asylum procedure should not be placed in the return model.

Adoption (SGP: C 12.1.4)

**12.j) Please describe:
relevant law and policy in your country**

Adoption is described in different laws:

- The Act of adoption of foreign children (*Wet opneming buitenlandse kinderen ter adoptie*)
- Alien Circular 2000 B/3 Family extension by adoptive children and foster children (*Gezinsuitbreiding met adoptiekinderen en pleegkinderen*)

Adoption of unaccompanied minor asylum seekers still does not take place a lot, while the approval of the country of origin and the certainty that the child has no legal guardian in the country of origin are needed (see also previous report).

12.k) To what extent does this conform to the Statement? Please outline in brief.

As described in the Statement, adoption takes place only after a thorough investigation into the parents' situation reveals that the parents can no longer take care of the child.

12.l) Are any changes needed? In relation to any first principle?

No changes are necessary.

Identity and Nationality (SGP: C 12.1.)

12.m) Please describe:

A new Act on Dutch Nationality (*Rijkswet op het Nederlandschap/RWN*) has been in force since 1 April 2003. The main difference in regards to the previous Act is that the condition of the person must have lived in the Netherlands, legally, for five years has been changed into a more severe condition that the person at the moment of application for naturalisation must have a legal permit without restrictions in the future for five years on the day of the application for naturalisation.

In practice this means that the unaccompanied minor asylum seeker that has reached the majority and has resided in the Netherlands for consecutive 5 years with a legal residence permit. With the introduction of the new *uma*-policy it will be very difficult for them to have a consecutive residence permit for 5 years. Also when the application for an extension of a residence permit has been done too late, consequently there will be no consecutive residence permit.

12.n) To what extent does this conform to the Statement? Please outline in brief.

The Statement of Good Practice is not complied with. Separated children cannot be considered for naturalisation until they reach the age of 18. Even when they have reached the age of 18 it will be almost impossible to receive the Dutch nationality. This has always been the case (see also previous country report)

12.o) Are any changes needed? In relation to any first principle?

Separated children and unaccompanied minor asylum seekers must be able to ask for naturalisation after a relatively long stay in the Netherlands and when they are integrated in Dutch society.

Family Reunification and Returns to a Country of Origin (SGP: C 12.2)

Voluntary return (SGP: C 12.2.1)

12.p) Please describe:

Return of unaccompanied minor asylum seekers can take place after a research by Nidos (in cooperation with other organisations, e.g. the Red Cross) and a research by the IND (in cooperation with the Ministry of foreign affairs).

Voluntary return

The IND is no longer responsible for the voluntary returns of unaccompanied asylum seekers. The International Organisation for Migration (IOM) is now responsible for the voluntary returns. Since June 1999 the **Regulation on Return** has entered into force. In this Regulation is described that the return is the individual responsibility of the alien. Furthermore that (minor) asylum seekers that would like to return to their country of origin can rely on facilities and support from the Ministry of Justice and the IOM as follows from the Regulation on Return and Emigration of Aliens from the Netherlands (**REAN**), like: financial support for the period after return, education on the care provided for in case of return or resettlement, assistance to find the required travel documents, flight tickets for the travel to the home country, when necessary reception before leaving the country, assistance with the travel from the Netherlands, in case of unaccompanied minor asylum seekers reception on arrival in the home country, means to cover the costs of the local transportation to the final destination and once-only financial support. Furthermore the Dutch government has initiated some return programmes for a few nationalities and countries of origin for the re integration of the people that return.

In practice voluntary return sometimes does take place after Nidos has passed over the guardianship to the one who is responsible for the minor in the country of origin. However only a few cases are known. There are unaccompanied minor asylum seekers that have departed for unknown destinations (*met onbekende bestemming*, or MOB).

Forced return:

It is planned in the new **uma-policy** that umas have to be returned to their countries of origin more often. Voluntary return is not described in the policy. The return of a minor can only take place when the guardian foundation Nidos has found adequate care in the home country to pass over the guardianship. Umas of 16 and older are being returned to their home country without a supervisor, unless they try to resist. Umas under 16 are not presumed to frustrate the expulsion and the air company involved is asked to take care of the unaccompanied minor. The International Migration Organization (IOM) is asked to take care of the reception of the minor at the airport. In the uma-policy it is presumed that where the government of a country takes care of reception for umas, the Dutch government has no longer a responsibility towards the minor.

In practice since even after rejection of the asylum request separated children are either given reception by the Agency for the Reception of Asylum Seekers (COA) or foster care by the guardianship agency NIDOS until their return can actually take place or until they reach the age of 18. At present there is a very limited amount of remigration of rejected unaccompanied asylum seeking minors. Most likely this group remains illegally in the Netherlands. After the age of 18 it is of the responsibility of the youngster to leave the Netherlands. Departure consultations are taking place at the moment with the local Aliens Police and the

category and unaccompanied minor asylum seekers that will turn 18 soon and are supposed to leave the country on their own.

12.q) To what extent does this conform to the Statement? Please outline in brief.

Minors who return voluntarily are sufficiently informed about the process and helped through it. There is still little practice with the forced return of umas. With the introduction of the new uma-policy it is presumed that the group of umas that have to return to the country of origin when turning 18 prefer to remain illegally in the Netherlands or depart for unknown destinations. This does not comply with the Statement of Good Practice. However more research should be done to the possibilities of reuniting the unaccompanied minor asylum seeker with his/her parents. Umas will not easily tell that they have parents while this has consequences for their asylum request. They will not get a AMV-permit if it is known that the minor has parents.

12.r) Are any changes needed? In relation to any first principle?

The option for return should be investigated, in cooperation with the child, before sending the child back. More research should be done to a possible reunion with parents. Therefore a situation should be created in which children will tell in an earlier stage that they do have parents. This must not have consequences in the decision on the asylum claim. Children should feel confident that they can trust the IND in this.

Conditions that must be fulfilled prior to return (SGP: C 12.2.2)

12.s) Please describe:

A separated child can return to the country of origin if

- the separated child is not eligible for a permit on asylum grounds (see 12a)
- the separated child can look after himself independently in the country of origin¹⁴
- there is adequate care in the country of origin (see also 8). The return of a minor can only take place when the guardian foundation Nidos has found adequate care in the home country to pass over the guardianship.
- The minor has to be in the possession of travel documents

12.t) To what extent does this conform to the Statement? Please outline in brief.

See previous report.

12.u) Are any changes needed? In relation to any first principle?

See previous report.

Programmes and Aid to Facilitate Reintegration (SGP: C 12.2.2)

12.v) Please describe:

According to the Dutch government, there is adequate care by default in orphanages in China, Sri Lanka and in Turkey and Algeria it is assumed that relevant or family are available. Children originating from these countries are not eligible for a residence permit under the unaccompanied asylum seeking minor policy. The Netherlands is also working on concluding special return agreements with other countries, such as Angola (see also 8). The Dutch government has financed the building of an orphanage in Angola for umas. Later this year this orphanage will be opened. The plans are to co-finance other projects as well in other

¹⁴ It is reviewed whether or not a child older than 16 was able to look after himself independently in the country of origin in the past (subjective independence). Lower House, 1999-2000, 27 062, no. 2, p.13, introduced the 'objective independence criterion', which is met if a person under the age of 18 has reached the age of majority in the country of origin, or if a young person under the age of 18 can be considered *de facto* independent, for which the age of 16 is considered the breakpoint. Since this is currently being studied in 10 countries, the objective independence criterion is not yet being applied.

African and Asian countries where a large amount of umas residing in the Netherlands come from.

12.w) To what extent does this conform to the Statement? Please outline in brief.

- In assessing whether an unaccompanied asylum seeking minor is entitled to residence in the Netherlands, the self-sufficiency and adequate care are examined by country instead of on an individual basis.
- In other cases, too, adequate care should not simply be assumed. Since the change in the definition of unaccompanied asylum seeking minor, no investigation whatsoever is conducted into whether there is adequate care available in the country of origin if there is an adult in the Netherlands who can be considered to be the caregiver for the child.

This does not comply with the Statement of Good Practice.

12.x) Are any changes needed? In relation to any first principle?

See previous report.

Settlement in a Third Country (SGP: C 12.3)

12.y) Please describe:

Permission for family reunification in these cases depends on the other country, while the free movement of persons within the EU does not apply to non-EU members. Children are sometimes reunited with their relatives in a non-European country.

At the EU-Top in Greece in June 2003 it has been decided that it is allowed to provide reception in the region of the country of origin. The Netherlands will join these plans together with the UK and other EU countries.

12.z) To what extent does this conform to the Statement? Please outline in brief.

The Netherlands complies to the Statement of Good practice.

12.zz) Are any changes needed? In relation to any first principle?

International agreements that consider the best interests of the children as paramount are essential to facilitate family reunification.

13. DATA COLLECTION

Good data on separated children is required to assist the implementation of good practice.

a. Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.

The IND should keep track of the registration of separated children concerning applications for asylum and decisions based on that. Furthermore, it is essential to have reliable registration of children who disappear with an unknown destination (MOB) (see also the appendix on trafficking), asylum applications rejected at registration centres and the situations where the detention of separated children is applied. This information should be made available to NGO's where this is required. Nidos should supply data concerning separated children on guardianship.

In practice The Ministry of Justice presents the amount of asylum seekers (including the information on umas) in the Netherlands quarterly based on information of the IND.

b. What sort of data is required? From government? From NGOs?

Please provide any current data (1998-2002) on separated children, which is available (from both government and NGOs) . We appreciate that at this time most of this data will relate to asylum.

More data should be required on the disappearance of umas in the Netherlands by the IND, Nidos and the police.

Numbers of umas that asked for asylum in the Netherlands:

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

Countries of origin:

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

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

Age of pupils of Nidos in 2001:

Total	16.508
Up to 12 years	11%
12-16 years	19%
16-18 years	53%
18+	17%

Age of pupils of Nidos in 2002

Total	13.942
Up to 12 years	12%
12-16 years	19%
16-18 years	49%
18+	17*

* Still in procedure, or receiving financial support in their living circumstances.

(Source Jaarverslag 2002, Nidos)

14. POLITICAL LEVEL - SUPPORT FOR CHANGE

Please where possible provide the following information :

*** describe the level of contact NGOs working with separated children have with: central government departments, local and regional governments**

There are different NGO's working with or for separated children in the Netherlands: Defence for Children International the Netherlands, SAMAH, the Dutch Refugee Council, Refugee Organisations in the Netherlands (*Vluchtelingenorganisaties Nederland/VON*) etc. The level of contact with the central/local and regional government departments is mainly based on dialogue. Sometimes projects NGOs undertake are financed by the government.

- describe any contacts with European institutions e.g.: members of European Parliament, European Commission, or European Council. (give names if possible)

European Commission: STOP and Daphne budget lines, ECRE.

- can you identify at the different political levels, any sources of support for improving the situation of separated children?

The Ministry of Justice has sharpened the policy concerning separated children. Presumably due to this more restrictive policy the number of separated children that asked for asylum has decreased. The NGOs try hard to lobby at the national level by writing critical research etc. However these reports are often waived away/ignored by the government. It would help if the NGOs are listened to more often.

- can you identify, at the different political levels, the main obstacles to change?

The main obstacle that should be changed is the Dutch government's view. They see and treat a child first as an alien in stead of a child with individual rights. This should be the other way around: the child should first be seen and treated as a child and in the second place as an immigrant. Moreover, the balance between aliens policy and youth policy seems to be lost, and children's rights have too little resonance in aliens policy. A new balance must be found.

As a consequence of the Dutch Government's view decreasing the number of umas seems more important, than taking care of children present in the Netherlands. Untill now the number of 'illegal' children in the Netherlands is very low. A harse reception system could increase this number.

Appendix: specific questions on migrant and trafficked children

TRAFFICKED CHILDREN¹⁵

Identify any domestic legislation which can be (a) used against traffickers and (b) applied to trafficked children:

- a) Domestic legislation that can be used against traffickers
 - In paragraph 3.6 of the new uma policy the measures that will be taken to prevent and stop smuggle/trafficking in unaccompanied minor asylum seekers are summarised.
 - enlarging of the analyse function of the information exchange by the royal constabulary (*Koninklijke Marechaussee/ Kmar*) and the IND-Schiphol;
 - Documentation training to airline's company and the local control authorities in China, Ivory Coast, Kenia and Tanzania;
 - Enlargement of the Dutch knowledge of immigration cases in the countries of origin and strengthening the ILO-backoffice;
 - The promotion of redoubling the amount of gate-checks;
 - Enlargement of the amount of pre-boarding-checks;
 - Maintain the al ready introduced transcription-duty in relation to travel documents for certain risk flights;
 - Delivery of 18 Edison-instruments to China;
 - Organise a seminar within the EU on false and falsified documents in relation to China;
 - The planned start of the (orientating) penal research on base of the operational analysis on Chinese uma's that has to be completed in the Summer of 2001;
 - IND and the royal constabulary (*Koninklijke Marechaussee/ Kmar*) start a pilot at AC Zevenaar, that is focussed on the improvement of the information on travel routes and trafficking in human beings.
 - At the beginning of 2001 a new analyse-system will be in use that will provide of more and better data in favour the approach of the of smuggle in human beings;

¹⁵ The information on trafficking is mainly based on the report by Ecpat and DCI-NL: Trafficking in children for sexual purposes from Eastern Europe to Western Europe. An exploratory research in eight Western European receiving countries, edited by Annemieke Wolthuis and Mirjam Blaak, Amsterdam 2001.

- The Board of Attorney-Generals is requested to pay extra attention to the penal approach of smuggle in human beings and trafficking of uma's.
- Research by the Research and Documentation Centre of the Ministry of Justice (*Wetenschappelijk Onderzoek- en Documentatiecentrum/WODC*) on the question whether the communities of minorities within the Netherlands criminal travel agents for the smuggle of fellow-countryman.
- It is not illegal to engage in prostitution in the Netherlands, but prostitutes have to be 18 years or older and have to do their work voluntarily. On 1 October 2000 a new law came into force lifting the ban on brothels. Article 250a of the Criminal Code deals with trafficking in people. The acts covered are listed below. They carry a maximum of six years imprisonment, but with aggravating circumstances can go up to a maximum of eight or ten years (sub 2 and 3).

Art. 250a of the Dutch Criminal Code:

The new article 250a of the Criminal Code states it is a criminal offence to traffic in persons, to force another person to engage in prostitution or to involve a minor in prostitution. These offences carry a maximum of 8 years imprisonment.

The article defines prostitution as engaging in sexual acts with another person for financial remuneration.

The following acts are offences under article 250a:

- forcing another person to engage in prostitution
- inducing a minor to engage in prostitution
- recruiting, abducting or taking a person to engage in prostitution in another country (pursuant to the 1933 International Convention for the Suppression of the Traffic in Women of Full Age)
- receiving income from prostitution involving a minor or a person forced to engage in prostitution
- forcing another person to surrender income from prostitution.

With the new law, it is no longer an offence to operate a brothel. The Netherlands has decided to change the law in a way to reflect everyday reality, with as objective to end abuses in the sex industry. The idea is that the changes are in the interests of the prostitutes themselves, and that it will also facilitate action against sexual violence and abuse and the traffic in persons.

The employment of prostitutes is regulated by municipal licenses. The municipal authorities should set rules for brothels operating within their jurisdiction.

Combat trafficking in persons

The introduction of a municipal licensing system is introduced to enable the police and other law enforcement agencies to carry out inspections of brothels. They will be especially alert to illegal forms of prostitution, and the trafficking in persons often associated with these activities. Trafficking in persons carries a penalty of up to eight years imprisonment. Keeping minors out of prostitution and other forms of sexual exploitation are considered high priorities according to the Dutch government, including the police and the public prosecutors department.

b) Assistance to victims

Prostitutes who are in the Netherlands illegally and who are victims of trafficking are entitled to assistance from the government. Anyone who lays charges against a trafficker is granted a temporary residence permit pending the outcome of legal proceedings (laid down in a circular (letter) to the Dutch refugee law: B-9, formerly B-17). In some cases they may be eligible for a permanent residence permit on humanitarian or personal grounds. (*Dutch Policy on Prostitution Questions and Answers, Foreign Information Division, Ministry of Foreign Affairs*). A temporary residence permit will only be given when there is enough information for the prosecution of the trafficker. Also when the informant has not worked in the prostitution, but before the work started was able to escape, there is no right for a residence permit. However there a change of law is being worked on at this point.

The expectations on the new law that lifts the ban on brothels ('Wet Opheffing Bordeelverbod') are that the current situation for prostitutes will be improved, but that the illegal prostitutes, under whom minors will disappear into even more hidden clubs or houses. These expectations are confirmed by the evaluation of the new law done by the Research and Documentation Centre of the Ministry of Justice (*Wetenschappelijk Onderzoek- en Documentatiecentrum/ WODC*) in 2002.

National Rapporteur on Trafficking in Human Beings

The (Bureau of the) Dutch Rapporteur on Trafficking in Human Beings started working in mid September 2000. The first report of the Rapporteur was done in 2001, the second report in 2003. the third report will be expected in the Summer of 2003.

What international covenants on trafficking have been signed by your country?

The following reports have been signed by the Dutch Government:

- The UN Convention on the rights of the Child (CRC). The main articles of the CRC are 34 and 35. At the same time the general principles such as making decisions in the best interests of the child, non-discrimination and taking the child's opinion seriously are also important in this respect;
- The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (May 2000) is also a very important instrument. However this protocol has not yet entered into force. The Netherlands have signed this Protocol, but they haven't ratified it yet. Because within the Dutch law only child prostitution has been incorporated.
- The ILO Convention C182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 which entered into force on 19 November 2000;
- The United Nations Convention against Transnational Organised Crime (Palermo Convention) of 15 November 2000 and its supplementary Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children;
- 1949 Convention for the Suppression of the Traffic in persons and of the Exploitation by Prostitution of Others (2 December 1949);
- The Convention on the Elimination of Discrimination of Women (CEDAW) (1979)
- Article 29 of the Amsterdam Treaty;
- Combating trafficking in human beings and combating the sexual exploitation of children and child aggravating circumstances, jurisdiction and extradition, Brussels, 21 December 2000, COM (2000) 854 final).

What is known about children being trafficked into your country? E.g. country of origin, routes of entry, estimated numbers, forms of exploitation?

Country of origin:

Child trafficking which has been seen during the last few years has mostly involved East European (mainly the Czech Republic, Slovakia, Bulgaria, Ukraine and Poland), Chinese and West African (particularly Nigerian) girls. They often end up as prostitutes either in the Netherlands or in another European Union country.

Routes of entry:

This can happen in different ways. Often it concerns indirect trade via Germany and Belgium to the Netherlands and sometimes on to other destinations. Some children are brought to the Netherlands illegally by child traffickers and are then exploited in the closed circuits of prostitution. Other children are brought to the Netherlands through the official asylum procedures. But this seems to lessen. They then usually disappear from the reception centres within a few days with unknown destination. The East European children (boys and girls) are caught up in the trade mostly as a result of advertisements or contacts made in discotheques in their home countries that lure them to the West under false pretences. A common example of this is that they are often offered holiday work abroad. However, a number of them know that they are travelling to the Netherlands for prostitution; indeed, some of them will already be

working as prostitutes in their country of origin. They come to the Netherlands because they can earn more money here. They do not realise the situation they will work in is not the promised Paradise. If the police discover them, they are usually sent back to their country of origin although some of them fall within the unaccompanied minor asylum seeker procedure.

Estimated numbers:

It is very difficult if not impossible to give clear figures on the numbers of trafficked children into the Netherlands because there is no clear registration method so far. The last research that has been done in 1998 by NISSO estimated the number of minors who are prostitutes in the Netherlands between 1000-1500. One third of this number (330-500) is estimated to be a minor who is a foreigner (not born within the Netherlands). It is unknown how many of them asked for asylum or not.

Forms of exploitation:

Minors are known to work in the prostitution. They are often working in non legalised surroundings rather than in the Red light district. There have been rumours that unaccompanied Chinese separated children had to work illegally in Chinese restaurants. It is further unknown whether separated children in the Netherlands are working illegally in the hotel and catering industry, the garment industry, the agriculture, drugs transport or other criminal activities etc.

To what extent are relevant authorities identifying trafficked children? E.g. police, social services, immigration authorities?

- The new una-policy shows that the awareness on trafficking in children has increased. More measures are taken to prevent smuggle and trafficking in human beings. The IND produces an identification dossier when children disappear.
- The police pays more attention to the situation in legal brothels rather than to the underground scene where the minors more often are working. The registration of the police only takes place in specific cases that are reported.
- The (Bureau of the) Dutch Rapporteur on Trafficking in Human Beings are trying to identify trafficked children.
- The Foundation against Traffic of Women (*Stichting Tegen Vrouwenhandel/STV*) is working on a registration system on trafficked children.
- Some social workers say that it is becoming more difficult for them to trace and identify trafficked children.

How are trafficked children being dealt with under immigration and asylum law and procedures?

- Unaccompanied (trafficked) children who ask for asylum, are appointed to a guardian (NIDOS). They can ask for a residence permit on humanitarian grounds, but this permit is seldom assigned to these children. They are often dealt under the policy for unaccompanied minors. In practice some traffickers/smugglers have been caught with help of the information gathered by the IND from the detailed second hearing with the unaccompanied minor. Women's trafficking is no ground for asylum; even when it is obvious that girls that have to return to the country of origin are immediately caught again and being trafficked again.
- Prostitutes who are in the Netherlands illegally and who are victims of trafficking are entitled to assistance from the government. Anyone who lays charges against a trafficker is granted a temporary residence permit pending the outcome of legal proceedings (laid down in a circular (letter) to the Dutch refugee law: B-9, formerly B-17). In some cases they may be eligible for a permanent residence permit on humanitarian or personal grounds. (*Dutch Policy on Prostitution Questions and Answers, Foreign Information Division, Ministry of Foreign Affairs*)

Do trafficked children have access to welfare provision available to other separated children or to child sex-workers or otherwise exploited children who are nationals of your country? E.g. education, health care, psychological support.

- Trafficked children within the Netherlands have the right to go to school. However in practice it seems unlikely that these children actually exercise this right to go to school.
- Trafficked children who are in the asylum-procedure have the same rights as other separated children within the asylum procedure. It is in practice within the Accelerated Procedure in the first reception centres and during the procedure however questionable whether they get adequate special attention consisting of health care and/or psychological support. Whereas Dutch sex-workers or otherwise exploited children who are nationals of our country (are supposed to) receive this adequate health care and psychological support.
- Furthermore trafficked children who are illegal in the Netherlands (did not go through the asylum procedure), do not receive reception by organisations like Asja (a rehabilitation centre for girls and young women, that want to quit forced prostitution) and the Social Service for Prostitutes (*Prostitutie Maatschappelijk Werk/PMW*) that other children that have been exploited get.

What additional or specific welfare provision is needed by trafficked children which is not currently being met?

- There should be more special attention for trafficked minors by all parties (police, reception, etc).
- Trafficked children who are illegal in the Netherlands, do not receive reception by organisations like Asja and the Social Service for Prostitutes (*Prostitutie Maatschappelijk Werk/PMW*). They should be given the adequate care and reception they need.
- More information should be given to trafficked minors Asha and other organisations about the B/9 procedure.

What arrangements are there for family contact, family reunification and managed return for trafficked children?

There are some projects, but it is not known how far this consists projects for minors. The International Organisation for Migration (IOM) organises return projects. Some trafficked minors fear for reprimands in the country of origin.

MIGRANT CHILDREN:

What is known about other migrant children who are neither refugee nor trafficked children ? Eg. country of origin, routes of entry, numbers, means of subsistence.

1. The group of 'illegal' children can be divided into the following groups:
 - children of 'illegal' migrant workers (including 'white illegals' (*witte illegalen*)¹⁶)
 - children of refugees, including those who have exhausted all legal avenues
 - children who have come to the Netherlands for family reunification
 - women and children who had independent residence entitlement but have lost it
 - unaccompanied minor 'illegal' children

The general estimates for 'illegal' aliens in the Netherlands range from at least 40,000¹⁷ to 150,000¹⁸. A recent exploratory study of 'illegal' children in the Dutch educational system¹⁹ gave an estimate of 10,000-20,000 children, although it must be noted that the number of 'illegal' children in the Netherlands who do not go to school is unknown.

The parent(s) of illegal children are not allowed to work. In practice some of them do try to work illegally.

2. children that come here for family reunification can be divided into 3 different categories:
 - EU subjects;
 - aliens from non-EU countries;
 - refugees and asylum seekers.

The number of MVV (authorisation for temporary stay) applications required for work, study, reunification or family formation has risen from 50,195 in 2001 to 64,728 in 2002. 39,405 applications were approved in 2002, the majority of which (nearly 24,000) were for family formation or reunification. In 2002 only 594 people applied for family reunification with asylum status holders, of which many were either Afghans from refugee camps in Pakistan (262) or Iraqis (54).²⁰ However it is not clear how many children are involved.

In the Netherlands there have always been two immigration flows. The first one is the flow of migrants of the (former) Dutch colonies (Surinam, Antilles, and Aruba) and the second is the immigration of labour from the mediterian area (Portugal, Spain etc.). The four major ethnical minority groups are Turks, Moroccan, Surinams and Antillian and Arubes.

Can you identify particular groups with international protection needs?

¹⁶ 'White illegals' are migrant workers who have been able to work for years with a tax and social insurance number, thus 'white.' They had taxes withheld and paid social insurance premiums, thus living a semi-legal existence until the introduction of the Benefit Entitlement Residence Status Act, which deprived them of their tax and social insurance numbers and their rights to social services.

¹⁷ Van der Leun, Engbersen et al., 1998.

¹⁸ Engbersen et al., 2002.

¹⁹ Bommeljé & Braat, 2002.

²⁰ *Terugblik op 2002, Migratie info*, Vol. 9, number 1, p. 11-13.

The abovementioned groups of illegal children and children who want to reunite with their families in the Netherlands.

How are these children dealt with under immigration and asylum law and procedures?

1. 'Illegal' children:

After years of preparation the Benefit Entitlement Residence Status Act (*Koppelingswet*),²¹ became effective on 1 July 1998. This act links the right to social services in the Netherlands to the valid possession of residence status. Without a residence permit, persons can only claim medically necessary care, education up to the age of eighteen and free legal assistance. The Benefit Entitlement Residence Status Act has meant that people without residence permits, including families with children, have to survive on the margins of society. The newly introduced Aliens Act 2000 (effective April 1 2001) and the Revised Return Policy (of 10 February 2000) also produce disastrous consequences for 'illegal' aliens in general, but especially for children. As a consequence of this policy 'illegal' children have no more right to central reception, income and other social benefits. Furthermore given their isolated position and the social and economic deficiencies they must face, it is obvious that children of 'illegal' families are extra vulnerable.²² The (presently applicable) Youth Services Act does not distinguish between 'illegal' and 'non-illegal' children; however, Article 3 paragraph 1 of the draft Youth Care Act²³ excludes 'illegal' children from youth care.

2. Family reunification:

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

Furthermore a policy paper on the application of the 'factual family relationship' criterion for the admission of minor children (hereinafter: Factual Family Relationship policy paper) was ultimately published in October 2001.²⁴ This policy paper applies to normal family reunification and not to asylum-related family reunification. Asylum-related family reunifications will be very closely scrutinised indeed for whether the family members are actually relatives of the principal person, and DNA tests will be requested on occasion. The Factual Family Relationship Policy Paper states that with regard to the initial admission of minor children, along with the general requirements such as the financial resources requirement, there is also the requirement that the 'factual family relationship' must remain unbroken and that this relationship must already have existed in the country of origin.²⁵ The Factual Family Relationship Policy Paper allows a maximum term of 5 years in which a parent or parents must submit a request for family reunification, and the concept of factual family relationship is considered to be intact so long as the parent and child have been separated for less than five years. After this five-year period the actual family relationship is, in principle, considered broken.

²¹ Bulletin of Acts and Decrees 1998, 203.

²² Forder, 2003.

²³ Lower House, 2001-2002, 8 February 2003.

²⁴ Provisional Aliens Policy Decision (*Tussentijds Bericht Vreemdelingenbeleid* or 'TBV') 2002/4, Bulletin of Acts and Orders 22/03/2002, no. 58.

²⁵ Aliens Act Implementation Guidelines 2000 B2/6.4.

What welfare provision is available to such children, formally or informally?

1. 'Illegal' children:

Children without a residence permit can only claim medically necessary care, education up to the age of eighteen and free legal assistance.

2. Children that came to the Netherlands for family reunification:

Children with a valid permit to stay have the same rights to welfare provisions as Dutch children.

Appendix on Participation²⁶

Young refugees

Article 22 of the Convention on the Rights of the Child.

Child refugees have the right to special protection, equally so when the child requests refugee status without being accompanied by his or her parents. In such cases, the government concerned is required to endeavour to trace the child's parents.

In the Netherlands, there are 15,000 children and young people under the age of 18 who have fled to the Netherlands for asylum, without parents or other guardians. The majority of those who arrived in 2002 came from Angola, Afghanistan and Sierra Leone. There are various reasons why they were unable to remain in their country, for example due to a war. Living in the Netherlands is difficult. They arrive in a strange country, with a strange language, and need to find their way in a strange community.

The interview

To enable the inclusion of the experiences of unaccompanied asylum seeking minors (AMAs) and young refugees, discussions were held with 10 of them, in a meeting centre in Amsterdam and at their homes. Additionally, the Samah organisation interviewed 59 unaccompanied asylum seeking minors in Amsterdam. The discussions covered subjects such as school, home, health-care, information, leisure time, the future and society. Discussions were also held with a girl from Turkey, who is an illegal immigrant in the Netherlands.

School

School is very important for the majority of young refugees. School ensures that they are occupied during the day and that they learn a trade, for future use. However, a large proportion of young people fail to attend school. This may be because they have insufficient funds, for example to pay the bus fare to school, or because they have been unable to sleep at night, and are therefore unable to concentrate in the classes during the day. Young people in a refugee centre, or living in small residential units, are frequently unable to do their homework due to the noisy environments.

"I don't go to school very often. I don't feel like it, I am unable to concentrate in the classroom, the lessons are not so good." (girl, 17)

"I think school is very important. I am learning to be an electrician, and I intend to continue with that in the future." (boy)

Many of the young refugees do not know where to turn when they have problems with a teacher. In general, there is a refugee coordinator present at the schools attended by the refugees, but some of the young people are unaware of this.

"I had an argument with my teacher, I'm no longer allowed to attend the classes. As a result I got a bad report." (girl, 17)

Housing

²⁶ This chapter is solely based on the report by Het Kinderrechtencollectief: [The Dutch NGO Coalition for Children's Rights,] Youth reporting on children's rights in the Netherlands, On the implementation of the UN Convention on the Rights of the Child in the Netherlands, November 2002.

Some of the young people live alone; others live in a refugee centre (AZC). The young people living in a refugee centre are dissatisfied with their housing. There is too much noise, and insufficient cleaning is done.

"I have to share a room with three other boys. Leisure, privacy and sleep are impossible."
(boy, 16)

There are occasions when young people are required to move to another location. They are not consulted beforehand, and the move is immediate, the same day. There is not always schooling available at the new location.

"I attended school while I was in the reception centre. Later I was transferred to a camp site, and I stopped attending school." (boy, 19)

There are also young people who live in a *Kleine Woon Eenheid (KWE)* [Small Residential Unit]. A small residential unit is a house usually accommodating four young people. A young refugee, living in a small residential unit, is coached by a mentor, with the basic principle that the mentor calls in several times each week, to check how things are going. In practice, many of the mentors have insufficient time for regular visits.

"I don't know what to ask my mentor." (girl, 16)

There is no supervision during the night. This means that the young people are on their own at night. This can be dangerous, particularly for girls who live alone in a house.

Some of the young people indicate that it is often difficult to live together with other young people, whom they don't really know, and that there are arguments or they feel irritable.

"I'm dissatisfied with my house. Nothing is good. I just don't feel at home." (boy, 17)

"One of the boys in my house is very dirty, I find that very unpleasant." (boy, 16)

"Everything is OK at home. My mentor visits about 4 times each week, nearly every day. We chat about a lot of things at school. I do have frequent problems with the neighbours. If the music is too loud, the neighbour and his wife come to complain. That is very annoying; the walls are not soundproof, at all." (boy, 17)

Refugee procedures

Every unaccompanied asylum seeking minor or young refugee has problems with the procedures, starting from the moment that he or she arrives in the Netherlands. The problem is that there is no information relating to asylum status and the asylum procedures. The young people do not always know who they should approach if they have questions about this. It is difficult to get in touch with the lawyer. Additionally, sometimes the lawyer is not fully informed about the asylum procedures.

"I have been in the Netherlands for almost a year. I still have not spoken to my lawyer. I do not know what the current situation is regarding my status." (girl, 16)

"I don't know where to turn when I have questions relating to my status. I have been here for almost two years, and I have never asked about it. I suppose I could ask my mentor about it." (boy, 17)

Because the procedure takes so long, and the young people are kept in doubt about their stay in the Netherlands, a lot of the young people develop psychological problems. Frequently, they are unaware of where to seek assistance.

"I keep thinking about whether I will be allowed to stay. This gives me a lot of headaches and I can't get it off my mind. I don't know who I can talk to about these problems."
(boy, 18)

"If I go to a doctor with a problem, he simply gives me paracetamol. The doctor does not listen to what I'm saying." (boy, 17)

Leisure time

No limitations are placed on the way that the young people spend their leisure time. Many of the young people would prefer to do fun things, but there are few opportunities. They either have no money, or they do not know how to get information about sport and other such things.

"I really enjoy dancing. Yesterday I went to a street-dancing class for the first time." (boy)

"I don't know what I can do and I don't have the money to do anything, so I sleep a lot."
(girl, 16)

"I go for a game of basketball, or I go skating. I can always borrow a pair of skates from a friend." (boy)

Dutch society

The Netherlands is very different from the countries where unaccompanied asylum seeking minors and young refugees come from. They have arrived in a society which, in their view, is bureaucratic and often quite strange. The young refugees indicate that the Dutch sometimes look at them in a strange manner. If they are in Amsterdam, it doesn't seem to be important that their skin has another colour, but the people in a village sometimes look at them in amazement.

"In a small village it is as if they have never seen a black person before!" (boy)

The big city is more individualistic. It is difficult for some of the young people to associate with other people. Many of the unaccompanied asylum seeking minors and young refugees say that they would like to come into contact with young Dutch people, but they do not know how to do this.

"I don't know how and where I can meet young Dutch people." (boy, 19)

"Sometimes the people are unkind. When I go into a shop there are people who follow me, to see whether I am going to steal something. I find this unpleasant." (boy)

Some of the young people say that they are unable to associate with young Dutch people, because they are not allowed to enter some of the discos. The unaccompanied asylum seeking minors and young refugees are not aware of their rights and obligations in the Netherlands. No one informs them about these things.

"I don't know what I can do and what I'm allowed to do in the Netherlands." (girl, 16)

Nevertheless, some of the young people think that they have the same possibilities as everyone else in the Netherlands.

"I think that I can have the same kind of future as everyone else. Someone once said to me: if you really want something, you can do it." (boy)

A number of the young people say that they would like to return to their own country, as soon as possible, so that they can see their family and friends again. Here in the Netherlands, they have nothing.

Suggestions for the government

- Refugees should be told about their residence status more quickly.
- Young refugees should be given information about the asylum procedures and Dutch society.
- Young refugees should be provided with more information regarding their future possibilities.

Some children and young people are illegal immigrants in the Netherlands. They do not have the right to remain in the Netherlands and they will not be granted a residence permit. The Dutch government requires that they leave the country as soon as possible. This is not always possible, and many remain in the Netherlands, in hiding and without rights to social welfare and care.

They do have access to education and the most elementary medical care.

Brim (not her real name) is 16 years old and lives in a three room flat, together with eight people.

Housing conditions

"We live in a house owned by a Dutchman. It is an old house. We have to wash ourselves in the kitchen, as there are no other washing facilities. Cooking is terrible. When you go up or down the stairs you get the feeling that it will collapse any minute. We do have a toilet. There are eight people there, and we have three rooms. I don't really have any space for myself. You are unable to live a normal life, there is almost no daylight, and there are mice and cockroaches. I am really scared of cockroaches. In truth, the house is simply very dangerous. The Dutch owner intends to sell the house or raise the rent. And we are simply unable to pay that. We haven't got a new house yet."

"I don't have any sense of experiencing life. I was 12 when I came and I am now 16, and I haven't noticed a thing. It seems like two days. Sometimes I think that I am 30 or 40 years old, because everyone that I see is that old. I don't have any friends of my own age. I don't discuss my problems with anyone, not even my sister or my mother. I simply don't talk to anyone. My mother and my sister have enough problems of their own.

The government could look for a house for us. Or give us money. If I don't have a house, I will have to live on the streets. I really don't know what to do. We cannot find a new house."

Health

"I can go to the doctor. But the doctors don't do anything at all. They know that we are illegal immigrants and they don't do a thorough examination. They simply look at you and make a quick examination, give you something simple - always the same sort of thing. I have a sore spot on my head, so I went to see the doctor, saying: "It is swollen and hurts a lot, and my hair keeps falling out." The doctor's reaction was: "Sorry, I cannot understand what is happening to your hair. You need to go to the hospital, to see a specialist, but I don't think that you can do that, as it costs a lot of money." An appointment costs 300 guilders. But if they simply give you a doctor's note you can go straight to the hospital. But the doctor just says that I am unable to handle that. Her first question is always to ask whether I have employment, and how many of my family are employed.

If anything happens, I am not allowed to go straight to the hospital. Their immediate reaction is "first let us look at your papers" and, if I don't have the necessary documents, they want to see the note from the doctor. The doctor will not give you such a note just like that. I have been living here for three years and on one occasion I was given a note for the specialist, because of my head. But when I arrived at the hospital, I was first asked to pay 300 guilders. I just don't go to the hospital. It is a bit better now, although I am still losing my hair. It still hurts, and it swells up now and then.

My father and my brother do some work occasionally, to earn some money. And I also have to work, sometimes. If I need to go to the dentist then this can be arranged. However, you first need to make arrangements with someone who is able to speak Dutch."

Information

"When I want to enquire about my refugee status, I don't know where to find the answers. We cannot simply make an appointment with our lawyer. You have to wait and keep waiting. It's been a year now. I have a lot of questions about what is going to happen. No one gives me clear answers.

People from here also frequently say that they don't know anything about it, and that we simply have to wait. But if they really listened to what we had to say, they should be able to do something. I wish that they would say: "we will check it out for you," but no one says that. I have been waiting for three years. And, every month, I hope the same: maybe we will be allowed to stay next month, and I can go to school."

Leisure time

"I really enjoy sport. I used to go jogging with my brother quite a lot. I also enjoy karate and martial arts. I cannot go running here in The Hague. I go to karate, because Petra is the coach. I will not go when other people give the lesson, I find that difficult. I have nothing at all here, and I do not wish to do anything else, nor to meet new friends - just to leave them all behind if I have to leave the Netherlands.

If you have nothing at all here, being an illegal immigrant, then you simply avoid getting to like something or someone. I do go to see Petra, because I know her so well."

Rights

"The most important aspect for me is the right to information. They don't give me any information. You live a life of uncertainty. I find it important to know that something is definite. I want to be certain about one aspect of my life, but there is nothing that I am certain about regarding my life. I really want to know whether I can stay here, that I can attend school. Health is of course always important, but I don't really think about it. I put my health to one side. I only think about what is going to happen in the future."

Do adults take you seriously?

"NO! Never! If you say anything to our people, their reaction is 'you are still too small, you need to grow a bit first.' No one takes me seriously. However, to be honest, I have grown up much faster than other people, due to everything that I have been through. I try to remain a child; I don't want to grow up. That would be a pity."

Society

"The Netherlands is very similar to Turkey. A lot of people are from other countries. There are almost more illegal occupants than legal ones. If you tell the Dutch about that, it scares them."

You have lived in Germany. Is there a difference between the Netherlands and Germany from your point of view?

"A great difference. In the Netherlands, the sea is very beautiful. I never saw the sea in

Germany. In Germany, I lived in a village, and I liked that much more. Illegal immigrants are treated badly in both countries. That is cruel; you should be clearer. Tell us clearly whether we can stay or not. Everything takes a lot of time. You only live once. It is a shame. I really cannot believe that I have been living here for 4 years. I cannot attend school, I will have to leave all the people behind again. I can't enjoy life if I don't have the necessary papers. We came here because it was extremely dangerous for my father and my sister. We cannot go back, because there is a grave danger that they will be killed. They belong to the PKK. I never want to see that country, I hate that country!"

Suggestions for the government

- Give the illegal immigrants in the Netherlands more clear information: what is the current situation.
- All schools should know that all children resident in the Netherlands and under 18 years of age - thus including illegal immigrants - have the right to education.
- Doctors should give better treatment to illegal residents in the Netherlands.