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Waiting for your future

Advisory report on the position of and eligibility criteria for foreign children

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“I don’t mind waiting for my future, but not my whole life”

- Quote from a foreign child -

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List of abbreviations

ACVZ	Advisory Immigration
AMV	Unaccompanied foreign minor
AZC	Asylum seeker's centre
COA	Central Agency for the Reception of Asylum Seekers
BIC model	Best Interests of the Child model
BIC questionnaire	Best Interests of the Child questionnaire
BID	Best Interests of the Child Determination
BMA	Medical Advice Bureau
DT&V	Repatriation and Departure
EHRM [ECHR]	European Court on Human Rights
EVRM [ECHR]	European Convention on Human Rights
GGZ	Mental Health Care
IMMO	Institute for Human Rights and Medical Research
IND	Immigration and Naturalisation Service
CRC	Convention on the Rights of the Child
MVV	Authorisation temporary stay
UNHCR	United Nations High Commissioner for Refugees

Chapter 1 Waiting for your future

Since the launch of the Children's Ombudsman in April 2011, several children have contacted the institute, because their application for a residence permit, or their parents', was rejected. Many of them have lived in the Netherlands for many years and some are even born here. They go to school, have friends and speak fluent Dutch. For these children and their environment it is incomprehensible that after all these years in the Netherlands, they will be deported to a country that they often do not even know at all.

These children also appear in the media on a regular basis. Mayors, schools and neighbourhood associations call upon the discretionary power of the Minister for Immigration, Integration and Asylum to prevent these children from being deported. In some cases, the Minister uses this power. The other children are left with only one question: "I've also been here for 10 years, just like that girl on TV, why can she stay and I can't?"

I am 12 years old and go to a Dutch school and I was born in the Netherlands. I've lived in a refugee centre my entire life. I cannot speak or read the language of my parents and know nothing about their country. I want someone to know my situation. Yesterday everyone was happy at school because Sahar receives a permit except me because I have no residence permit. At school, everyone talks about their vacations, I don't. I have not been anywhere, only always in the Netherlands in an asylum seekers' centre. When I go to my parents' country, I'm an outsider, a foreigner, because I was born in the Netherlands. I see no future. The government does not think about how long people have been living here. I've never been happy because I have been without a residence permit for so long. When I go to stores and see furniture, it makes me sad because it reminds me of a real home.

Anonymous excerpt from an email to the Children's Ombudsman from a foreign child

These children were not heard by the government, so they turned to the Ombudsman for Children. The Ombudsman for Children monitors compliance with children's rights as defined in the Convention on the Rights of the Child (CRC). The Ombudsman for Children can examine individual complaints or follow signals on its own initiative. In addition, the Ombudsman for Children can provide solicited and unsolicited advice on policies. The Ombudsman for Children cannot assist in the process of individual cases and cannot review or influence court decisions. This also applies to decisions of the Immigration and Naturalisation Service (IND) when parents and unaccompanied minors apply for a residence permit or for decisions of the court on the appeal against a decision of the IND. However, the signals that the Ombudsman for Children received were worrisome. They formed a reason for the Ombudsman for Children to start investigating the position of foreign children, especially the position of children who have lived in the Netherlands for a longer period of time, and taking this position in the light of the UNCRC. The research resulted in this advisory report.

The report first presents a number of - anonymous - cases to illustrate the circumstances these foreign children may be living in. Then the children's rights and the concept of "the best interests of the child", which are relevant to this report, will be discussed in the jurisdiction. The position of the child within the current immigration policy in the Netherlands will also be addressed. Then, national and international scientific research on the effects on children involved in long-term residence permit procedures will be discussed. This issue has been raised to Minister Leers of Immigration, Integration and Asylum. Finally, this document looks at the available facts and figures concerning foreign children.

From all this, the Children's Ombudsman draws conclusions and makes a number of recommendations. The conclusions are, in short, that the rights of the child as enshrined in the Convention in the case of foreign children are insufficiently protected. In the current immigration policy, for example, there is too little attention for the position and interests of foreign children. Child Specific conditions are - with a few exceptions - not taken into account when applying for a residence permit. The harmful effects of prolonged procedures and stay in the Netherlands for the development, identity and health of children are therefore not included in the assessment of an application for residence. This, while international and national scientific research shows that clinical damage can occur in children if they stay long in uncertainty about their future, and also the possible adverse effects of deportation once a child has been rooted in the host country. Distressing is the fact that the Dutch government hardly has an idea of the problems foreign children have to face: exact figures are missing. The position, interests and rights of foreign children are not adequately safeguarded. This is organised better for other children within the family and juvenile (criminal) law. Here, specific attention is paid to the interests and rights of the child. The Ombudsman for Children believes that the situation of foreign children urgently needs improvement. For this purpose, a number of recommendations are proposed in the final chapter. These are not exhaustive, but a step towards a better future for foreign children.

Chapter 1 Research setup

2.1. Research questions

This research focuses on the question of the effects of the - sometimes very long - stay in his Netherlands are on foreign children and to what extent have their own interests have a place within the immigration policy so that these effects can be considered. Sub-questions are:

- What are the possible effects of long-term immigration procedures on children?
- To what extent have the obtained results of scientific research on these effects been reflected in the Dutch immigration policy?
- To what extent are and/or can these effects be considered within the immigration policy?
- How are the interests of the child, in particular the right to identity, development and health, currently secured within the immigration policy?
- On what points could the immigration policy be improved in respect of the rights of children and weighting of their interests?

2.2 Research method

The research used national and international scientific studies on the impact of long-term residence permit procedures and stay in a host country on the health, identity and development of foreign children. Relevant national and European case law, legislation and regulations were also analysed. Individual records of children were studied as well.

In addition to the above documents, many interviews were held between April 2011 to February 2012 with experts in the field of immigration law, including lawyers, special education experts, lawyers and academics. The various working visits to asylum seekers' centres, restricted freedom locations and family locations contributed to a complete picture of the underlying problem.

Finally, questions concerning this material have been asked twice to Minister Leers of Immigration, Integration and Asylum. The questions and answers are part of this report.

2.3. Definitions

This research concerns the effects of long-term residence permit procedures for foreign children and focuses on the damage that the children suffer during and/or because of the procedures. In addition, this research focuses on the weighting of the interests of foreign children in those procedures. The terms "foreign children", "residence permit procedure" and "the interests of the child" will be examined more closely.

2.3.1. Foreign children

“Foreign children” are children and young people under the age of 18 who came to the Netherlands by themselves, with siblings and/or their parents and want to obtain a residence permit, or who were born from parents who came to the Netherlands for a residence permit, and did not receive one yet. Most of these cases involve children and/or parents (at least initially) who have requested asylum. These children usually live for years in various asylum seekers’ centres, often spread across the country, under austere living conditions, with little privacy and limited financial resources.

So whom are we talking about? Mauro and Sahar are familiar names in the media. But there are many more children who disappear in anonymity and have the same problems. In chapter three we will describe the experiences of a number of children.

2.3.2. Permanent residence procedure

The ‘permanent residence procedure’ is the whole procedure from the moment the child, young person and/or family enters the Netherlands until the time they (have to) leave the Netherlands, where the involved parties try to obtain a residence permit. This procedure can also start with an asylum procedure and end with a request for legal residence.

2.3.2. The best interests of the child

The concept of ‘the best interests of the child’ is a broad concept. The interests of the child - in this study – means that a child can develop (Article 6 CRC), develop and keep an identity (Article 8 of the CRC) and that there is a care for its health (Article 24 CRC). A child applying for asylum under Article 22 CRC is also entitled to special protection.

Chapter 3 Case Studies

Since the appointment of the Ombudsman for Children on April 1, 2011 several children have sent signals to the Ombudsman for Children. They have lived in uncertainty for years and their future is still unclear. The media covered similar stories in recent years, such as the stories about Sahar, Aram, Mauro, Youssef, and the children of the Quadiri family. Neighbours, classmates, sports clubs and mayors usually called upon Minister Leers of Immigration, Integration and Asylum through the media, to use his discretionary power. Sometimes these actions led to the conclusion that because of 'harrowing' or 'special individual' circumstances, stay was granted to the child, and if present, to the parents as well. However, most children in similar situations cannot count on a large social network that is committed to a permanent residence in the Netherlands. We did not see them on television or in the newspaper.

To illustrate the problems in the current policy, a number of anonymous cases concerning foreign children are described.

3.1. Cases

1: Three children 3, 8 and 11 years old.

The family, consisting of a father, mother and three children (two of them were born in the Netherlands), has been residing in the Netherlands since May 2001. In 2010, the family applies for a regular residence permit after repeated asylum applications are rejected. There is also a request for an exemption from the obligation to first obtain an authorisation for temporary stay (MVV obligation) in their country of origin, due to medical problems with both the father and two children of the family. They suffer from post-traumatic stress disorder, for which there is no treatment available in the country of origin. This is evident from an opinion of the Medical Advice Bureau (BMA) from 2009. Behavioural specialists of the University of Groningen formulate a report that shows that return to the country of origin will most probably lead to an inhuman situation for the children. The father is being treated by a psychiatrist. Returning will worsen his situation to the extent that he will not be able to continue to provide enough care, guidance and support for his children. To date, these children have no clarity.

2. Boy, 12 years old.

The boy's parents come from Iraq, but he was born here. He lives in various asylum seekers' centres. The boy goes to school and has friends, but he is not doing well. He is under constant stress and suffers from depressions. For this reason the boy is being treated by a GGD doctor. Then the moment arrives that the parents and the boy move to one of the family sites. They have been told that they are not allowed to stay in the Netherlands and a return to Iraq is prepared, a country the boy has never been to. His health condition deteriorates. The environment of the family protest, they do all they can to keep the boy and his parents in the Netherlands. Finally, there is a redemptive message from the Minister of Immigration,

Integration and Asylum. He uses his discretionary powers. The boy can stay in the Netherlands with his parents because there is a combination of special circumstances.

3. Girl, 8 years old.

The girl has lived in the Netherlands since birth. After more than eight years in the Netherlands, she still has no clarity about her residence status. The mother came from the Ukraine to the Netherlands in 2002, and applied for asylum. This application is rejected. Later that year, the father travels to the Netherlands. This application is also rejected. He proposes appeal, which is declared well founded due to insufficient reasons for rejection by the IND. The mother's rejection is subsequently withdrawn. Almost a year later, the asylum applications of the parents are rejected again. They both appeal. Eighteen months later, pending the appeal, both rejections are withdrawn. The IND then looks into the matter again. In mid-2006, the asylum applications of the father and mother are rejected again. Less than a month later, the rejections are withdrawn again. In late 2007, the asylum applications are rejected again by the IND. The father and the mother appeal against this decision. More than three years later, in November 2010, the appeal is not upheld by the court and the parents make an appeal. In May 2011, the appeal is dismissed. Almost nine years after the application, the final decision came. Meanwhile, the girl was born and, now 8 years old, grown up in the Netherlands. She speaks Dutch, goes to school and made friends. She does not know her parents' country. She is, in other words rooted in Dutch society. In all these years she has never been examined or heard.

4: boy, 14 years old and girl, 8 years old.

A 14-year-old boy and an 8-year-old girl contact the Ombudsman for Children. They have lived in the Netherlands for five years now with their parents. The IND has decided negatively on their application for residence. The courts have maintained this decision. They must return to Iraq.

5: A 17-year-old girl

The girl came with her brothers, father and mother from Armenia to the Netherlands in 2004. She was 10 years old. She and her family have been in the Netherlands for seven years now. Their applications for residence permits have been rejected, despite orthopedagogical reports showing that return in this case is not in the best interest of the children. Return has, to date, did not yet prove possible. The girl and her brothers have established roots in the Netherlands and feel Dutch. Meanwhile, they are constantly uncertain about their future.

6: girl, 11 years old

An 11-year-old girl was born in the Netherlands. She has been in the Netherlands all her life and now lives in a town in Zeeland. The girl is in the first grade of secondary education. She writes to the Ombudsman for Children that she and her family have been in the procedure all her life and she is very afraid that they must one day return to her parents' country, while she

has never been there and does not speak the language. All her friends live in the Netherlands. She wants certainty about her future.

7: Boy, now of age

The boy came to the Netherlands all by himself in 2001 at the age of 9 and asked for asylum. He was then placed in a foster home in anticipation of the decision on his application for a residence permit. He went to school, made friends, learned Dutch and became a Dutch boy. After five years the negative decision came. A regular request was submitted on his behalf. This application resulted in a negative decision at the Department of Administrative Law of the State Council in late 2010. All this time he was allowed to remain in the Netherlands on the basis of the policy on unaccompanied minors and he stayed with his foster parents. After his 18th birthday, he would still have to leave the country. Rooted in the Netherlands and with no future in the country of origin, he stayed in the Netherlands even after his 18th birthday and hid in illegality. He has survived thanks to the help and support of the network he had built up.

3.2 Bottlenecks in these cases

In case one and five, reports were prepared by independent experts on the situation of the child, and their well-being was assessed on the basis of internationally recognised instruments. These reports stated that the children have suffered damage due to the prolonged uncertainty and that return will lead to (further) damage among children. These reports have been put forward to the IND. Nevertheless, the application to stay was not granted. In the second case the boy had to wait for the appeal on a discretionary power before his mental problems began to play a role. There was no or insufficient room for this earlier in the procedure while he had been struggling with serious health problems for many years. The three cases illustrate that -through no fault of the parents and the child – a procedure can continue for years, with the resulting consequences for the children involved. In this case, it is difficult to talk about "abuse" of process capabilities, because there is only one procedure. Indeed, the court even ordered the case sent back to the IND, because it had failed to provide sufficient reasons for its decision. In this instance, therefore, the government also played a role in the duration of the procedure. In addition, the use of the possibility to object and appeal cannot be considered as stretching the procedure. This concerns available legal remedies and no one can be blamed for using it.

All cases involve children who end up staying in the Netherlands for a long time. After a stay of five, seven, eight or eleven years – such as the children in cases three, four, five and six – chances are these children are rooted in the Netherlands and derive their identity from the Netherlands. This can be assumed completely when a child is born here and has lived here for such a long time, as in cases two, three and six. Returning to the country of origin may be harmful to their identity and development and, in that case a disproportionate infringement on the interests of the child in relation to other interests. This is not necessarily so in all cases, but due to lack of expert advice on this there is no insight or clarity. Also, case seven involves an (former) unaccompanied minor. These children may stay in the Netherlands until they are 18, even if their application has been rejected. Meanwhile, the Minister of Immigration,

Integration and Asylum announced the intention to revise the policy for this group, but the fact remains that under the current policy, the government provides room for children to establish roots in the Netherlands.

Chapter 4 Children's rights

This chapter looks at children's rights as they result from the ICRC. Next, the developments in the (European) law concerning the interests of foreign children are explained. Finally, this chapter focuses on the term root establishment and the comparison in that context with the The Hague Child Convention on Child Abduction.

4.1 The Convention on Children's Rights

The CRC requires that the best interests of the child shall be a primary consideration in all decisions and that a balance is systematically made about the impact of a decision on the child and its rights. The test criterion of "the best interests of the child" can be traced back to various other places, such as in article 24, paragraph 2 of the Charter of Fundamental Rights of the European Union (EU Charter). Additionally, it is considered in the Explanatory Notes to the Ratification Act of the UNCRC that in case of conflict of interests, the interests of the child should prevail as a general rule. The term "best interests of the child" is a broad term. This can - as part of this study - be substantiated further on the basis of the children's rights for development (Article 6 of the Convention), for its own identity (Article 8 CRC) and health (article 24 CRC). In addition, a child who seeks asylum under Article 22 CRC is entitled to special protection.

The right to development is one of the four general principles of the UNCRC. The article means that a child has to have the ability to be able to develop into an adult. It is closely related to the rights to health, an adequate standard of living, education, leisure and play. States must create an environment where children can grow up in a healthy and protected manner, free from fear. The environment should focus on optimal physical, mental, moral, psychological and social development and the development of the personality and talents of the child.

Article 6: Every child has the right to life. The government ensures as much as possible the survival and development of the child.

In addition to this development, the identity is also of great importance. Children derive their identity from education, culture and the environment in which they grow up. When children are removed from their familiar environment, it may affect their sense of identity.

Article 8: The child has the right to preserve his or her identity, including nationality, name and family ties. The government supports the child to recover his or her identity if it has been deprived.

Finally, children have the right to the highest attainable health and health care. The right is closely linked to the right to development and an adequate standard of living and is one of the basic needs for children. This right is linked to the right to development. Health includes physical and mental health. The State has the duty to ensure that all children have access to health care and it should prevent that children's

Article 24: The child has the right to the best possible health and health care facilities. The government will ensure that no child is denied access to these facilities.

health is harmed. Government intervention, such as forced relocations, can also be harmful to children.

The Dutch State has an obligation to ensure these and other children's rights. Children's Rights apply - partly on the basis of Article 2 CRC (prohibition of discrimination) – to all children, whether they or their parents are or not legally residing in the Netherlands. The Central Appeals speaks of a duty of care for these children.¹

Finally, the ICRC gives no right to stay in a host country. The ICRC does, however, provide suggestions for when that right can arise, namely when children's rights come into question.

4.2 Judiciary concerning the interests of the child

The administrative department of the State Council does not grant Article 3 CRC a direct effect and the term also does not appear within the immigration law. Nevertheless 'the interests of the child' is sometimes used as assessment criterion in the lower courts. And rightly so, if we look at the developments within the European law.

Here 'the best interests of the child' is included as an independent and important factor, often also to fill in Article 8 of the ECHR ('family life'). In this context, the cases Maslov against Austria (June 23, 2008, no. 1638/03) and Üner against Netherlands (June 18, 2011, no. 46410/99) are, among others, pointed out. In the last case, the ECHR added two criteria to the guiding principles from the case Boulif against Switzerland (August 2, 2001, no. 54273/00). On the basis of these guiding principles, it can be determined whether deportation is necessary. According to the ECHR, the interests of children also play a role as it stated in paragraph 57:

The Court would wish to make explicit two criteria that may already be implicit in those identified in Boulif:

- The best interest and well-being of the children, in particular the seriousness of the difficulties that any children of the applicant are likely to encounter in the country to which the applicant is to be expelled.

The ECHR added as a criterion:

- The solidity of social, cultural and family ties with the host country and with the country of destination.

(...) The longer a person has been residing in a particular country, the stronger his or her ties with that country and the weaker the ties with the country of his or her nationality will be. (...) The Court will have regard to the special situation of aliens who

¹ Statement of July 15, 2011, LJN: BR1905.

have spent most, if not all, their childhood in the host country, were brought up there and received their education.

Also in the Nuñez against Norway case (June 28, 2011, No. 55597/09), the interests of the children were balanced explicitly against other interests, including those of an effective immigration policy: despite the fact that the mother had committed a criminal offense in the past, was declared an undesirable alien, got expelled from the country and then illegally returned to Norway, the best interests of the child under the ECHR weighed more, even more than an effective immigration policy. In literature, we speak of a rise of children's rights in the European context, where children and young people should not be just a victim of the choices of their parents, even if these choices are related to criminal offenses.²

The court rulings are not isolated. They fit within the tendency to attach great importance to the interests of children. What those interests look like will have to be further defined with each individual case, but statements such as those relating to Boultif and Üner will provide sufficient clues. In section 4.1 it was already indicated that in the context of this research for the interpretation of the term 'best interests of the child' a further link can be made to the Articles 6, 8 and 24 of the UNCRC. In addition, the binding of a child with the host country should be taken into account. This must be balanced against the bond with the country of origin (parents) when determining what is in the best interest of the child. This is evident from the above-cited judgment on Üner. Following the European law, great value must be attached to that bond with the host country.

4.3. Rooting and the The Hague Convention

The bond referred to in the case law, is closely linked to establishing roots. They are actually two sides of the same coin. Establishing roots is a concept from Article 12 of the The Hague Convention. It is not defined here, but can be understood as a far-reaching degree of integration. Establishing roots is determined on the basis of the circumstances of the case, such as the relationships the child has built up in his new environment, with friends at school and in the neighbourhood and if a child feels at home and speaks the language.³ From Article 12 of the The Hague Convention, it can be concluded that after one year, roots will have been established, after all: after this year, returning does not simply happen, although only if the child has not settled by now in his or her new environment. If that is the case, then - as can be understood - return is not always in the best interest of the child.

Establishing roots is a far-reaching degree of integration, determined on the basis of the circumstances of the case, such as the relationships the child has built up in his new environment, with friends at school and in the neighbourhood and if a child feels at home and speaks the language. This may be the case after one year.

The above can also be applied to foreign children. On the basis of the specific circumstances - such as relations with the environment, the at home feeling in the host country, speaking the

² Reneman, M. (2011), Het Kinderrechtenverdrag krijgt tanden, [The UNCRC is given more teeth] *Magazine Asiel & Migratierecht [Asylum & Migration law]*, 2011, no. 8

³ See for instance the ruling of the court in The Hague on July 18, 2008, LNJ number BD9009, but also the explanation of Article 12 of the The Hague Convention by the IKO Centre on www.kinderontvoering.org

language - it can be established whether a child is rooted in and has a strong bond with the host country. Analogous to the The Hague Convention, this may exist after one year and it must always be balanced if return - or forced return in the terminology of immigration - is in the interest of the child.

Chapter 5 Position of children in immigration policy

Wherever decisions are made that affect children, the best interests of the child is a primary consideration. This should also apply to assessments of residence applications by the IND. The interests of the child are not mentioned explicitly in the Dutch immigration law and are only implicitly expressed in a limited way in the immigration law and underlying policies. There is, for example, a special admission policy for child soldiers and girls who may be confronted with genital mutilation. The Ombudsman for Children finds that this is insufficient to safeguard the interests of all children and that there is a lack of policy on other child-specific circumstances. Examples are described in chapter three. The following section discusses the position of foreign children within the immigration policy.

5.1. Lengthy procedures, less attention for rapid return

Many foreign children have been in the Netherlands for years. This may have several reasons. Some of the children who have been here a long time, came to the Netherlands with their parents or were even born here under the old asylum procedure, where the 'stacking' of procedures was very common. The government can also make mistakes within these proceedings, such as in case three described in Chapter three: here the IND provided insufficient reasons for its decision, causing the judge to rule that the IND had to look into the case once again. It is also possible that an exhausted family did not return to the country of origin (of the parents) because the parents did not cooperate, because the children and their parents cannot be deported and/or because the Dutch government had less attention for a rapid return. This is notably the case with unaccompanied minors, who are allowed to stay in the Netherlands until they are 18. Although also with other foreigners, including families, there were less substantial efforts on the return by the Dutch government than is currently the case. Finally, there may be changing circumstances, for example in the medical situation of one of the family members or the security conditions in the country of origin, causing the procedure to (temporarily) come to a standstill or the inability to work on a return. The causes can therefore lie with the government and/or the parents or sometimes neither. However, it should be clear that the causes do not lie with the children.

Meanwhile, much has been done to shorten the procedures and to facilitate return. For instance, the new asylum procedure came into force in 2010 and Minister Leers announced the Policy Vision Streamlining the admissions procedure and the re-evaluation of the unaccompanied minor foreign national policy. As a result, new applications for a residence permit can be settled sooner. The government also seeks to reduce the number of repeated requests. In addition, the government will now also strengthen its power to facilitate a fast (er) return to the country of origin (of the parents). This is accomplished by means of return programmes, support in the form of cash and in-kind assistance. With the reassessment of the unaccompanied minor foreign national policy, the government wants to enable rapid return of unaccompanied minor foreign nationals, even before the age of 18.

The Ombudsman for Children agrees with the Minister that fast, clear procedures are in the interest of the child. However, these procedures should be carried out carefully with due regard for the interests of the child. There will always be difficult cases that require a longer procedure. In addition, these new procedures offer no solace to foreign children who came to the Netherlands under the old policy – meaning before July 2010 - or are born to parents who came to the Netherlands under the old policy. For this group, there is no policy and no solution. Finally, it should be kept in mind that making use of the option to submit objections and appeals cannot be regarded as stretching a procedure: these are, after all, legal remedies and no one can be blamed for using them. These are various reasons that lie beyond the child and can prolong procedures and a stay in the Netherlands.

5.2 No independent position of (the interests of) the child

Minors that come to the Netherlands with their parents, have no independent position and procedure under the current immigration law. They only have a secondary importance, which means that they only get a residence permit if the parents get it. The interests of the child are not tested independently from the parents and do not constitute an independent criterion. However, their situations are so different from one another, that it is essential to consider those interests. Only in exceptional situations this does happen, for example if there is a risk of genital mutilation for a girl in the country of origin. That does not mean that children have no place in the immigration policy. From the age of 15 children are heard by the IND as a standard procedure and children of 12 to 14 years old may be heard. Specially trained officers conduct these hearings. Children under the age of 12 are therefore not heard and the interrogations of children over 12 years old are not so much about the interests of the child, but relate to the situation of the family. In the decision of the IND, there is therefore no explicit reference to the interests of the individual child and how these are balanced against other interests that have played a role. This allows the interests of the children, which sometimes may be substantially different from those of their parents, to be neglected.

5.3 No independent expert involved in the procedure

Both unaccompanied minor foreign children and children who apply for a residence permit with their parents, will have a medical check in the first few weeks. This check is performed by an independent medical agency, but is limited in general to the physical health of the child. This means there is little to no attention paid to the psychological condition of a child. A lawyer who assisted an unaccompanied foreign minor also gave the following signal:

“The child was outside within five minutes. ‘Nothing to worry about, she’s a bit sad’, the conclusion was, while I clearly saw a traumatised child anxiously huddled. The girl had just fled Congo all by herself, where she was used as a sex slave for the army.”

Besides the medical check at the initial stage of the procedure, there are in principle no further (medical) checks from the government. Medical care is available in the various shelter locations. If necessary, a psychologist, psychiatrist or youth care can be used. However, this

offer is aimed at providing short-term care and does not have the objective to gather information for the benefit of the procedure. The expert assessment of these caregivers are not registered with the IND and/or used in the assessment of the application for residence. Employees in the immigration process, such as the COA [Central Agency for the Reception of Asylum Seekers] and the DT&V [Repatriation & Departure Service] can generate signals if they worry about a specific case and forward a case for reconsideration with the IND. However, these employees receive no specific instructions for this, nor do they have the ability to discover problems and assess them. An independent expert who emphasises the welfare and interests of the child is missing. This is very different compared to other jurisdictions in the Netherlands, where decisions are made, for example, related (also) to children, such as a supervision order in a divorce, home placement or a conviction. Here the Council for Child Protection has an important research and advisory position. The Council for Child Protection can, as an independent expert, submit to the court an overall picture of the condition, development, and moral or spiritual interests of a child. Whereas there is explicit attention to the interests of the child in the family and juvenile (criminal) law, it is not regulated within the immigration law, where decisions often have far reaching consequences for the children. Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, already criticised this in 2008. In his report of March 11, 2009⁴ - on the occasion of his visit to the Netherlands - he wrote the following:

"Children coming to The Netherlands with their family are generally included in the asylum procedure of their parents. There is no organisation making sure that the decision is in the best interest of the child in contrast to other areas of Dutch law such as family law, where the Council of Child Protection ('Raad voor de Kinderbescherming') is involved."

Since then, the situation has not improved. In the current residence permit procedures, it is only possible on the initiative of the parent(s), guardian or unaccompanied minor foreigner and/or a lawyer, to engage an independent expert to report on the overall development or mental health of a child. These reports are prepared by psychologists, psychiatrists and special educators, who voluntarily investigate (minor) foreigners and issue reports⁵. Such reports are not an integral part of the immigration policy and do not belong to the standard procedure. Moreover, without solid justification such reporting can be ignored. The government also strongly criticises these reports: they are only prepared late in the process and focus too much on the achievement of residence. The government does not offer a (better) alternative: without these reports, there is nothing known about the development and (mental) health of the minors involved. Research into the mental health of unaccompanied minor foreigners from Leiden University shows after all that teachers and family guardians only

⁴ CommDH (2009) 2, paragraph 3.4.

⁵ Orthopedagogical reports are among others prepared by the University of Groningen. As of April 1, 2012 the university will start a research and expertise centre for children and immigration law. This centre will prepare orthopedagogical reports for the benefit of foreigners procedures. As of March 1, 2012 the Human Rights Institute and Medical Research (IMMO) will also start. This is a network of psychologists and psychiatrists that examines (minor) foreigners for medical clinical damage.

report in a small number of cases when they identify emotional problems in young people.⁶ What is not known cannot be considered in the procedures.

5.4 Decision IND only marginally reviewed by the administrative court

The administrative court can only marginally review decisions of an administrative body. This also applies to immigration law and decisions by the IND. The court assesses whether the IND 'reasonably could come to its decision'. A substantive review of all relevant interests, rights and circumstances, including that of the child, is therefore not or hardly possible. As indicated earlier, no explicit appraisal of the interests of the child in relation to other interests is made in the decisions of the IND. The judge can therefore not even marginally review this consideration, which keeps those interests out of consideration most of the time. Again, the difference between immigration and other jurisdictions is expressed here: in the family and juvenile (criminal) law, a juvenile court decides with its own expertise and on substance when it concerns children.

5.5 Discretionary power is not the solution

In the immigration debate it is often said that children in truly distressing cases can be absorbed through the discretionary power of the Minister for Immigration, Integration and Asylum. This argument cannot be maintained. The discretionary power is intended for situations that are exceptional because of a number of factors, and where it is therefore not reasonable to demand the foreigner to return to his country of origin. At this time, however, these are no longer a few exceptional cases but a structural problem that affects many children. That discretionary power is not a solution here. In addition, long-term stays and the associated establishments of roots indeed play a role but are not decisive according to the minister, and certainly not the only factor enabling residence. This is in line with the letter of February 21, 2007 by the then Minister of Justice, Hirsch Ballin, to the Lower House.⁷

In response to questions from the Lower House, Minister Leers further indicates that damage in the development upon return, in connection with other specific aspects, may lead to use the discretionary power, but that this is not decisive.⁸ This means that the discretionary power does not provide a solution for a foreign child who has suffered damage as a result of lengthy procedures or who has established roots. Finally, the discretionary power paves the way for legal inequality and is very arbitrary to some extent partly due to the absence of a test. This is shown by the fact that one minister uses the discretionary power significantly more or less than the other.⁹

⁶ Bean, T. (2006), *Assessing the psychological stress and mental health care needs of unaccompanied refugee minors in The Netherlands*, Leiden University.

⁷ Parliamentary Papers II, 2006/2007, 19 637, no. 1131.

⁸ Reaction from the Minister of Immigration, Integration and Asylum to written questions with ref. 2011Z24657 of 30 January 2012. See also Chapter 7.

⁹ Information that the Minister of Immigration, Integration and Asylum has provided to broadcaster NOS, based on a freedom of information request, to show that Minister Leers granted 41 people a residence permit in his first year on the basis of his discretionary power. In comparison, under Balkenende government 2 and 3 (with minister Verdonk) this was more than 1,000 people, under Balkenende 4 (the State Secretary Albayrak) 550 people + 27,000 people through a general amnesty and under caretaker government Balkenende 4 (with Minister Hirsch Ballin, of February-October 2010) 40 people.

Chapter 6 Scientific research

Foreign children are a vulnerable group. Procedures at the IND, possibly followed by the court to obtain a residence permit can sometimes take a long time. All this time these children live in asylum seekers' centres, where there is often an accumulation of problems, with many uncertainties concerning the possibility to stay. Children grow up in abnormal circumstances, and relying on their parents is not always possible. Parents often endure serious tensions and are usually unable to respond adequately to their children. Sometimes a child takes over care and family responsibilities from the parents. On the other hand, a child goes to school and is building a life in the course of time. This is how it establishes roots in Dutch society. In short: long procedures can have a damaging effect on children and at the same time gives them room to develop a Dutch identity and take root in the Netherlands. Both effects have become apparent from these cases that have reached the Ombudsman for Children, as described in chapter three, and confirmed by national and international scientific research. This will be addressed in this chapter.

"Are my parents still there when I come home or have they been taken away?"
– quote foreign child–

6.1 Damage caused by prolonged stay

Damage: complaints about the health or development of the child, consisting of mental problems, psychosomatic complaints and / or behavioural disorders, such as post-traumatic stress disorder, depression, eating disorders, unexplained abdominal pain and / or headache, et cetera.

International and national research shows that foreign minors in different areas could be damaged during their stay in the host country. This damage may be related to the health or development of the child and may include mental health problems, psychosomatic complaints and/or behavioural disorders. This may include post-traumatic stress disorder, depression, eating disorders and unexplained abdominal pain and/or headache. A meta-analysis conducted by Bronstein and Montgomery to survey a total of 3,000 foreign children in six Western countries, shows that foreign children suffer from post-traumatic stress disorders and depression to a greater degree than their peers in normal living conditions.¹⁰ This also follows from British research. The study of Fazel and Stein shows that a quarter of refugee children struggle with psychological problems three times more often than British children who are not refugees.¹¹ The length of the stay - and the associated uncertainty - indicates an important risk factor for the development of psychiatric disorders in aliens. Research by Laban and others into the psychological health of Iraqi asylum seekers in the Netherlands shows that the prevalence of psychiatric disorders increases as asylum seekers stay longer in the Netherlands. This study identified significantly more psychiatric disorders in Iraqi asylum seekers who stayed in the Netherlands for more than two years than in Iraqi asylum seekers who arrived later. Laban's research shows that the prevalence of psychiatric disorders in the first group is 66.2%, whereas in the second, control group, it is 42.0%.

The length of stay in the Netherlands has a negative effect on the mental health of aliens.

¹⁰ Bronstein, I. and P. Montgomery (2011), 'Psychological Distress in Refugee Children: A systematic Review', *Clinical Child and Family Psychology Review*, 14(1), March 2011

¹¹ Fazel, M. en A. Stein (2003), Mental health of refugee children: comparative study, *327 BMJ*, 134.

The duration of the stay, as a result of a long asylum procedure, was identified as the most important risk factor (after 'female gender'). It was also found that the contribution of a long asylum procedure was higher than that of major events in Iraq. The mental disorders that occurred most frequently among this group were anxiety disorders, depression and psychosomatic disorders.¹²

Nielsen and others concluded that the adverse effect of long-lasting procedures on the mental

Research from Denmark shows that after spending one year in an asylum seekers' centre, 58% of asylum children between 11 and 16 years has to deal with serious mental health problems.

health is also applicable to minors. They did research among 260 asylum children in Denmark. They came to the conclusion that a long stay in asylum seekers' centres is detrimental to the (mental) health of children. The 2006 study shows that

children who have been in an asylum procedure for more than a year are at increased risk of mental health problems. The survey shows that 58% of children between 11 and 16 years face these problems. The problems that the research group face have a serious nature. It involves serious emotional problems or psychiatric disorders, such as borderline or depression. It is remarkable that this study shows that girls are more likely faced with emotional issues, and boys more often with behavioural problems.¹³ International research also applies within the Dutch context, according to research from Kalverboer and Zijlstra. They saw more than 200 foreign children in the Netherlands since 2006.¹⁴ They published several times about the damage caused with asylum children, due to the uncertainties and conditions during the lengthy procedures, and deportation. Kalverboer and Zijlstra concluded that this damage in the development is particularly manifested in children who have stayed in the host country for five years or more.¹⁵ Their conclusions in the paper *De schade die kinderen oplopen als zij na langdurig verblijf in Nederland gedwongen worden uitgezet* [The damage that children suffer when they are expelled from the Netherlands after a long stay] from 2006, have been endorsed by dozens of Dutch scientists, including various child and adolescent psychiatrists and professors developmental psychology.

The severity of the problems that foreign children may have to face is further underlined in a study by Pinto Batista Wiese and Burhorst. They examined the nature of the psychiatric

¹² Laban, C.J., H.B.P.E. Gernaat, I.H. Komproe, G.A. Schreuders and J.T.V.M. de Jong (2005), 'Invloed van de duur van de asielpprocedure op de prevalentie van psychiatrische stoornissen bij Iraakse asielzoekers in Nederland', *Tijdschrift voor psychiatrie*, 2005, 743-752, but also see 'Impact of a long asylum procedure on the prevalence of psychiatric disorders in Iraqi asylum seekers in the Netherlands', *Journal of nervous and mental diseases*, 2005, 843-851, C.J. Laban, H.B.P.E. Gernaat, I.V. Komproe, B.A. Schreuders, J.T.V.M. de Jong and 'The impact of a long asylum procedure on quality of life, disability and physical health in Iraqi asylum seekers in the Netherlands', *Social Psychiatry Epidemiol.*, 2008, 507-515, C.J. Laban, I.H. Komproe, H.B.P.E. Gernaat and J.T.V.M. de Jong.

¹³ Nielsen, S., M. Norredam, K.L. Christiansen, C. Obel, J.Hilden and A. Krasnik (2008), 'Mental health among children seeking asylum in Denmark – the effect of length of stay and the number of relocations: a cross-sectional study', *BMC Public Health*, 2:293.

¹⁴ Kalverboer, M. and E. Zijlstra, 'Ontwikkeling kind moet voorop staan bij asielbesluit' [Development child must be paramount in asylum decision] *Trouw*, 29 October, 2011.

¹⁵ Kalverboer, M.E., A.E. Zijlstra and E.J. Knorth (2009), 'The Developmental Consequences for Asylum seeking Children Living With the Prospect for Five Years or More of Enforced Return to Their Home Country', *European Journal of Migration and Law*, 2009; M.E. Kalverboer and A.E. Zijlstra (2006), *De schade die kinderen oplopen als zij na langdurig verblijf in Nederland gedwongen worden uitgezet* [The damage that children suffer when they are expelled from the Netherlands after a long stay]; M.E. Kalverboer and A.E. Zijlstra (2006), *Het Belang van het kind in het Nederlands recht; voorwaarden voor ontwikkeling vanuit een pedagogisch perspectief* [The Importance of the child in Dutch law; conditions for development from a pedagogical perspective], M.E. Kalverboer and A.E. Zijlstra (2006), *Kinderen uit asielzoekersgezinnen en het recht op ontwikkeling; het belang van het kind in het vreemdelingenrecht* [Children from refugee families and the right to development; the interests of the child in immigration law]; M.E. Kalverboer and H. Winter (2006), 'Asielgezinnen en kinderrechten' [Asylum families and children's rights], *Journaal Vreemdelingenrecht*, 10, 772-785.

disorders of minor asylum seekers and refugee children in the Netherlands aged 0 to 18 years.¹⁶

The research group consisted of 129 children who participated between 2003 and 2004 in the Transcultural Problems Program of the Herhaalhof at the psychiatric treatment centre for children and adolescents that provide psychiatric treatment specifically for this group. In 6% of children with parents and 25% of the unaccompanied minors, there are “extreme traumatic experiences”. In addition, 26% of children with parents and 68% of unaccompanied minors face 'psychological traumatic experiences'. The problems both groups have to deal with range from anxiety, behavioural problems, depression, learning disabilities, developmental delays and somatic complaints.

Minors who leave their country without parents, the unaccompanied minor foreign nationals, and apply for asylum elsewhere are often a specific research topic. Various studies have shown that the prevalence of mental health problems among these children is even higher than that of children arriving with their family. Research by Batista Pinto Wiese and Burg Horst shows that unaccompanied minor foreign nationals face psychiatric disorders more often than

57% of unaccompanied minors in the Netherlands meet the criteria for post-traumatic stress.

children who stay in the Netherlands with their parents.¹⁷ In addition, according to a study by Hodes and others from 2008 into 78 unaccompanied minor foreign nationals in Great Britain, there was war trauma or severe post-traumatic stress in 28 of these cases.¹⁸ Over two thirds of this surveyed group has an increased risk of developing post-traumatic stress. Research into the mental health of unaccompanied minor foreign in the Netherlands shows that this group faces mental health problems more often than their peers. Research by Bean shows that 57% of unaccompanied minors meet the criteria for a diagnosis of post-traumatic stress. Remarkable in this study is that it appears that the guardians and teachers notice the emotional and health needs of unaccompanied minors in all cases.¹⁹

The absence of parents therefore appears to be an additional risk factor. On the other hand, when one or both parents are present, they often also suffer from psychological problems. As a result, they are not always able to provide care and support to their children, who need it.²⁰

¹⁶ Batista Pinto Wiese, E. and I. Burhorst (2005), 'The Mental Health of Asylum-seeking and Refugee Children and Adolescents Attending a Clinic in the Netherlands', *Transcultural Psychiatry*, December 2007, vol. 44, no. 4.

¹⁷ Batista Pinto Wiese, E. and I. Burhorst (2005), 'The Mental Health of Asylum-seeking and Refugee Children and Adolescents Attending a Clinic in the Netherlands', *Transcultural Psychiatry*, December 2007, vol. 44, no. 4.

¹⁸ Hodes, J., D. Jagdev. and Cunniff, C. (2008), 'Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents', *Child Psychol Psychiatry* 2008, 49(7).

¹⁹ Bean, T. (2006), *Assessing the psychological stress and mental healthcare needs of unaccompanied refugee minors in the Netherlands*, Universiteit Leiden.

²⁰ Garbarino, J. (1991), 'Developmental consequences of living in dangerous and unstable environments: the situation of refugee children', *The psychological well being of refugee children: Practice and Policy issues*, Mc.Callin ed. Geneva: international Catholic Child Bureau.

Research carried out by, among others, Ajduković shows that the mother's mental health problems have a negative impact on the emotional wellbeing of refugee children.²¹ This also follows from the research done by Almqvist. This research examined 50 Iranian refugee children at the time they were twelve months in Sweden and they were examined again two and a half years later. This research showed that especially the wellbeing of the mother was an important predictor for the welfare of the child.²² Absence of, or mental problems with parents therefore constitutes another important risk factor in the development of damage to the child.

In short: Long procedures and the associated uncertainties could cause clinical damage in foreign children. It involves psychiatric and psychological disorders such as depression, eating disorders and anxiety disorders. Psychosomatic symptoms may also manifest themselves.

6.2. Establishing roots

There are protective factors that can provide a counterbalance to the health and development

Establishing roots is a far-reaching degree of integration, determined on the basis of the circumstances of the case, such as the relationships the child has built up in his new environment, with friends at school and in the neighbourhood and if a child feels at home and speaks the language. This may be the case after one year.

risk factors that foreign children are exposed to. These include the ability to form friendships, get help, recovery of daily life, security and safety, education and experience of social support.²³ Protective factors can therefore be found in the relations with society, in other words: establishing roots.

The realisation that such social relationships play an important role in the development of children and adolescents are, as Boer and Verschuereen have expressed, as old as mankind.²⁴ The General Comment 4 to the CRC underlines that the health and development of children is strongly determined by the environment in which they live. It can be assumed, as also confirmed by the European law (see chapter four), that the longer a child resides in the Netherlands, the stronger those ties will be with Dutch society, so the more a child is settled, the more this will influence his or her health, identity and development. The nature and quality of those ties are believed to be usually essentially different with children than their parents. The parents are often largely excluded from mainstream life in the Netherlands and mostly spend their time in the asylum seekers' centre. Children, however, go to a Dutch school, make Dutch friends and quickly learn the Dutch language, customs and habits. Earlier research by UNICEF also pointed out that asylum children who spent an important part of their childhood, or even their entire lives in the Netherlands, loose ties with their country of origin. If they still have to return after a long procedure, they cannot settle there.²⁵ Gmelch already wrote about this in 1980 in his study about returning migrants. He described that people who returned after

²¹ Ajdukovic, M. and D. Ajdukovic (1993), 'Psychological well-being of refugee children', *child abuse & neglect*, 17.

²² Almqvist, K. and A.G. Broberg (1999), 'Mental Health and Social Adjustment in Young refugee children 3 ½ years after their Arrival in Sweden', *Child Adolescence Psychiatry*, 38:6.

²³ Willigen, L.H.M. van (2003), *Report of the quick scan of "Het kind en het asielbeleid" in de praktijk* [The child and asylum policy in practice], commissioned by the ACVZ.

²⁴ Boer, F. en K. Verschuereen (2004), 'Sociale relaties en ontwikkelingen van kinderen: op de voet gevolgd', *Kind en adolescent*, [Social relations and developments of children: closely followed, Child and adolescent] 2004, 25:101–107.

²⁵ Kloosterboer, K. (2009), *Kind in het Centrum; kinderrechten in asielzoekerscentra* [Child in the Centre; children in asylum centres], UNICEF, Foundation Children stamps Netherlands and Central Agency for the Reception of Asylum Seekers.

a long stay in a highly developed country to a third world country, no longer shared the basic norms and values of traditional culture or common interests. Family and friends had also built new relationships with others, and were not always open for re-tightening of the old relationships and friendships. Some migrants said that they now had more in common with the people in the

"I speak Dutch, I am Dutch,
everything I have is here."
-quote foreign child-

host country than with the people in their country of origin. Once returned, migrants often disagreed with the way things are done, in the lack of efficiency and punctuality.²⁶ Because minors are currently barely monitored after their return to the country of origin, there is little information available and it is not clear how they are doing. This applies both to the children who return with their parents and unaccompanied minor foreign nationals. Based on the situation of foreign children in the Netherlands Kalverboer and Zijlstra have concluded on several occasions that expansion is not always in the best interest of the child and can harm their development.²⁷ In addition, it is also assumed in the Hague Convention on Child Abduction that deportation - in that case called return – is, in time, not always in the best interest of the child.

²⁶ Gmelch, G. (1980), 'Return migration', *Annual Review of Anthropology*, (1980), 9.
²⁷ See note 14 and 15

Chapter 7 Written questions to the Minister

As part of the research, written questions have been posed twice to the Minister of Immigration, Integration and Asylum. The relevant questions and answers have been included.

7.1 Questions round one

7.1.1. Questions and answers:

By letter dated September 13, 2011, the Minister was asked the following questions:

1. How is it ensured that the interests of children are also the primary consideration in immigration cases, that a systematic balance is struck on the impact of the decision on the Rights of the Child and the asylum child and that the divergence of the interests of the children and their parents will be taken into account over time?
2. What is your reaction to the (above referred to and other) research on the origins of damage done to asylum children caused by prolonged asylum procedures and possible deportation?
3. To what extent is there room in the current legislation and policy to take the above-illustrated settling and damage into account? Please explain your answer.
4. Do you see a reason in the scientific research to adapt the Dutch legislation and/or policies? Please explain your answer.
5. On the basis of the above, to what extent do you see a reason for the introduction of an independent procedure for children to do justice to their own interests, or do you see any other alternatives?

The following answers came in a letter dated October 14, 2011:

Answer to Question 1: I understand this question in such a way that it refers to situations where parents with children apply for asylum. The current procedure is geared to children. For minors, who are part of a family, it is ensured in principle that they are not separated from that family. Children under 12 years old with parents are not separately burdened with a strenuous interrogation. Children aged 12 to 14, at the request of themselves or heard at the request of their parents or a (legal) representative, children aged 15 years and over are always heard. Gradations are taken into account in the child's path to maturity. This is based on the thought that children aged 12 years and over may have their independent motivations. Unaccompanied minors are specially trained officers in hearing and deciding. In addition, the age of the applicant is taken into account in weighing and judging its statements. There are also special care facilities for unaccompanied minors. However - and I think this is an important point - the interests of children are a consideration where these interests must always be balanced against other interests, including those of the Dutch government when it comes to an effective and careful asylum policy. I recognise that children are often affected by choices that others, including

their parents, have made and that this can lead to distressing cases. Nevertheless, these individual conditions are often so different that there is no general and uniform solution. The various interests should therefore be mapped clearly per case and balanced against each other. Whether that assessment is carried out correctly, is ultimately at the discretion of the judge. Regarding the possibility that special interests of parents and children diverge, think of a situation where a girl is in danger of being circumcised, and where the danger comes from the parents. In such cases, the girl can get a license and it may be denied to parents. Also in 1F situations the main person can be denied a license and the other family members may obtain a permit. But these are exceptions. The general rule is that parents and children stay together, and all or none of them are permitted to stay. If you are referring -regarding the divergence of interests - to the fact that children often over time establish roots faster than their parents, for example, because they go to school, I cannot imagine otherwise than that it is paramount for children to stay with their own parents. This may also be in the country of origin. Parents are primarily responsible for return after rejection of an application. The coalition also included that efforts are aimed at returning families. This is because the Dutch government does not find it desirable that children are growing up without the prospect of staying and integrating. The principle that parents are responsible for their children is in line with the principles of the CRC (in particular Articles 5, 9, 10 and 18).

Answer to Question 2: I assume that long-term stay without view of clear perspective can be harmful in the long run for a child. The purpose of these studies is known to me and is also frequently invoked in individual cases. Usage of the Streamlining Admission Procedures Programme will prevent long-term stay without clear perspective. Deportation is inherent to a maximum comprehensive immigration policy. If it is determined in a careful manner that protection is not at issue, there is a departure duty, however inconvenient this might be for children. Even with the implementation of the mentioned programme, the cooperation of foreigners itself will remain an essential condition for a prompt return after rejection of an application.

Answer to Question 3: Settlement and damage are no reasons to allow stay. This is not as such embodied in policy and also confirmed in the law. The immigration policy can only exist if it is decently implemented, where the interests of the individual alien and that of Dutch society are to be balanced against each other. This applies specifically for unaccompanied minors when parents reside in the country of origin. The basic principle is that the unaccompanied minor who does not need protection, is reunited with the parents. This is also the basic principle in the UNCRC. Only in those cases where it appears that the parents truly cannot look after the child (for example, in situations of abuse), other shelter can be sought. Secondly, if there are no parents, reunification with family members is pursued and finally reception in shelters. However, aspects as mentioned by you in connection with other specific aspects, in

some cases lead to the use of the discretionary power. This relates to situations that are exceptional because of a number of factors, making it unreasonable for the alien to return to its country of origin. Prolonged stay and settling can play a role but are not conclusive and certainly not the only factor on which residence may be permitted.

Answer to Question 4: It is not the case that the policy is directly adjusted on the basis of scientific research. There are some reasons for this. The research reports that are used in individual cases are frequently based on questions to the minor him/herself or his/her guardian and possibly foster care and are therefore not always objective. This is also shared in jurisprudence. The situation in the country of origin is often not investigated further. Investigations often start with the fact that the alien does not have a stable and secure environment in the country of origin. These reports are often not supported by objective data. However, the Dutch government carefully examines whether there is adequate shelter and this needs to be guaranteed with the actual deportation. If it is not established that children are taken care of in an appropriate manner, these children will not return. When protection is needed, it is provided. If the application is rejected, then return takes place. I want to maintain that principle.

With the Streamlining Admission procedures Programme and the reassessment of the unaccompanied minor foreign nationals policy, I intend to make speed up procedures and quickly clarify the perspective. Collaborating in return when the application was rejected is essential. I share your opinion that in situations where it is carefully established that there is no perspective in the Netherlands, the stay should be as short as possible.

Answer to Question 5: A separate procedure already exists for unaccompanied minors and for a large part for the children who are part of a family. After all, children have the right to be heard. At the same time, I want to prevent that children - especially if they are part of a family – go through an asylum procedure completely independently. The preservation of the family is indeed paramount. Much like the position in the Spekman/Anchor motion, I wish to discourage parents prolonging the stay because their child will be granted a residence permit after a lengthy stay in the Netherlands.

7.1.2 Response of the Ombudsman for Children to the answers

The Minister assumes that long-term stay without clear perspective can be harmful in the long term for a child, but believes that establishing roots and damage in itself are not a reason to allow stay. The Minister points out that this is not, as such, enshrined in the policy and that this is confirmed by the courts. Deportation is inherent to a comprehensive immigration policy. According to the Minister, parents are primarily responsible for return after rejection of an application and therefore also for the welfare of their children. The interests of children must always be balanced against other interests, including those of the Dutch government when it comes to an effective and careful asylum policy. The Minister further indicated that attention is

paid to the minors in asylum procedures, in the sense that they are heard from their 15th birthday and if they are between 12 to 14 years old, they may be heard within their parents' procedure. Different interests of the child and parents may also be taken into account, such as in case a girl is in danger of being circumcised or 1F situations (probable suspects of war crimes). He preferably wants to avoid a fully independent procedure, as well as parents prolonging their stay in the Netherlands because their child will be granted a permit in the Netherlands after a lengthy stay.

Finally, the Minister indicates that establishing roots and damage, in conjunction with other specific aspects, in some cases may lead to using the discretionary power. This relates to situations that are exceptional because of a number of factors, which are not reasonable for the alien to return to his country of origin. Prolonged stay and establishing roots can play a role but are not conclusive and certainly not the only factor on which residence may be permitted.

The position of the Minister is not convincing. The Minister states that policy is not directly adjusted on the basis of scientific research. In this context, the Minister only points to research reports that are used in individual cases. In scientific research, both nationally and internationally, a consensus needs to be identified concerning the risks of damage to foreign children. The Minister does not go into this research specifically. The Minister even assumes that it may cause damage, but nevertheless believes that damage in itself is no reason to allow stay.

The argument that the law confirms this, is not valid: in the immigration law, the court assesses the fact that the IND has decided in accordance with the policy and if damage is not part of the policy, then the court cannot assess a decision by the IND. Therefore, the law confirms nothing, except that damage or the establishment of roots cannot be assessed. This situation is not in line with European directives and jurisdiction in which the interests of children are given a prominent role and are carefully weighed. Although the Dutch courts do increasingly assess the more general notion of 'best interests of the child', damage could be a part of this.

Also, the reference to the responsibility of the parents is not tenable. The Ombudsman for Children agrees with the Minister that parents are primarily responsible for the welfare of their children, but there is a turning point where that responsibility has to at least partly lie with the government. This was also endorsed as such by the Advisory Committee on Aliens Affairs (ACVZ) in the report *For the Social Importance* of December 2011. The ACVZ describes in the report that establishing roots and integration is usually considered for the risk of the alien and responsibility for the development of the situation is denied by the central government. However, as an alien stays longer in the Netherlands, becomes part of society and the government never begins the deportation process, part of the responsibility of the situation should be adopted. ACVZ uses the guideline that this may mean that the prospect of a return tilts towards the prospect of a stay.

In addition, the hearing of children over 12 years provided no guarantee that their interests, potential damage and settling are included separately in the considerations for a residence

permit. There are no specific assessment criteria, whereas precisely that weighting according to their own interests is essential. In addition, children under 12 are not heard at all. Furthermore, the argument to not assign children an independent procedure is unsubstantiated: an independent procedure or position, after all, does not preclude the maintenance of a family. However, an independent procedure or position leads to the assessment and weighting of the interests and own merits of the children, which -considering the UNCRC- is recommended. The event that a child receives a residence permit, and the parents (and any siblings) also receive a permit does not alter this conclusion. Moreover, an independent procedure or position does not always lead to the granting of a residence permit: the standalone procedure or position is not aimed at the automatic granting of a residence permit, but the independent assessment of the ground for residence of a child. In the light of this, it does not necessarily need to be assumed that parents are encouraged to extend the stay, as indicated by the Minister. Finally, the discretionary power is too uncertain: the Minister recognises that the discretionary power provides room to do justice to exceptional situations based on a combination of aspects. Aspects such as long-term stay and establishing roots may play a role here. Without any further indication that damage is an important aspect, possibly in conjunction with other aspects, the discretionary power therefore does not ensure that possible damage for foreign children is taken into account. There must be a clear policy in which the interests of children are clearly secured and which can be checked by a judge as well. This is not possible with decisions on the basis of the discretionary power.

7.2. Question round two

7.2.1. The questions and answers

On December 13, 2011 the then Minister Donner of the Interior and Kingdom Relations answered - on behalf of Minister Leers - some parliamentary questions about foreign children during the oral question time. The occasion was an article in Trouw [Dutch newspaper] on December 7, 2011, in which the Ombudsman for Children gave an explanation of the damage incurred in children by lengthy procedures. Minister Donner said that the Ombudsman for Children is speculating in that article. According to the minister "professionals [damage, ed.] would identify during the procedure. They identify it as it occurs. It is concluded, however, that it does not occur in the least as often as the Ombudsman for Children now presents it. The facts do not indicate regular medical or physical harm to children."²⁸

As the minister seemed to indicate that there would be figures from the Ministry of Immigration, Integration and Asylum about the number of cases of damage to foreign children, the Ombudsman for Children decided to ask additional questions to Minister Leers. By letter of 22 December the following questions were asked:

1. How often does it occur (monthly or annually) that asylum children are harmed?
2. What kind of damage are we talking about in these cases?
3. What method is used to determine the damage in these cases?

²⁸ Question hour lower house on 13 December, 2011, for stenograph see appendix

4. Can you explain the signals of professionals in the immigration chain? For example, do they have instructions to issue such signals?
5. How many asylum children are now awaiting deportation and what is - for each of them - the duration of their actual residence in the Netherlands?

By letter dated February 8, 2012, the Minister replied to these questions as follows:

Minister Donner has indicated that in general medical and other aspects are considered in the decision of the residence application and that the decision is also subject to judicial review. The Court also found that the idea that such problems are raised in all of the procedures is not recognised. He also stressed that the rights of children are enshrined in the immigration process. Minister Donner did not mention damage in the sense of the definition in your letter of December 22, 2011 because it was not yet known and he can therefore not answer questions 1 to 3. An answer to your question 4 is partly already given, namely that if medical or other issues are raised in cases, they are also taken into account in the asylum decision. The staff in the immigration process obviously does not have the expertise to diagnose medical problems. However, employees of the Central Agency for the Reception of Asylum Seekers (COA) can, for example, refer aliens to a doctor or emergency if they have the impression that this is necessary. A protocol is also drafted for this. The applicant or his representative can provide this information during the procedure. In general, if in the current asylum procedure it is evident that there is a medical issue, the IND may request an opinion from BMA for a decision on an asylum application. In response to your question 5, I want to emphasise that asylum seekers who have exhausted all legal remedies have an obligation to leave the Netherlands independently. In that sense, there is therefore no 'waiting for deportation' of asylum seekers. The Dutch government can facilitate in the voluntary departure and proceed to forced deportation if not complied with the obligation to leave. This also means that it is not known if all such asylum seekers are still in the Netherlands. I can also not automatically generate the exhausted asylum children category from the systems of the partners within the immigration process because children are often registered with their parents' case. However, it is possible to inform you about the number of failed asylum minors that are in the DT&V in the return process in the so-called freedom restrictive locations and family locations. At the end of 2011, approximately 220 minors stayed in restricting freedom locations and approximately 420 in family locations. These figures only provide a rough indication of the number of rejected asylum children in the Netherlands. Children that have gone through a regular procedure can also stay in one of these locations and are included in the above figures. Furthermore, it is possible that rejected asylum children reside in the Netherlands without being in sight of one of the partners.

After oral consultations of the Ombudsman for Children with the Ministry of Internal Affairs, the Minister communicated the following in a further letter of February 28, 2012:

It is not possible to provide an exact figure of foreigners residing in the Netherlands children without a residence permit and to break down how long the children have resided in the Netherlands. This lies in the fact that some of the foreigners, after rejection of an application, independently made the choice to stay out of the picture of the immigration process. Whether they therefore left the Netherlands cannot be specified. (...) Attached you will find an overview of foreign children possibly residing in the Netherlands for 4 years or longer. This concerns children who stay in a family relationship in the Netherlands, not unaccompanied minors. The figures provide a snapshot of the situation at the beginning of 2012:

Foreign children without a residence permit	4 years or more	5 years or more	8 years or more
In the reception (whether or not in procedure)	420	250	170
Not in reception, but in procedure	1.030	690	540
Out of sight, but no record of actual departure	17.320	13.100	10.340

7.2.2 Response of the Ombudsman for Children to the answers

Minister Donner indicated earlier in the debate with the Lower House that professionals pay attention to damage to foreign children and that it does not occur in the least as often as the Ombudsman for Children presented it. However, when requesting the information on which the Minister relied, an overview of the number of foreign children living in the Netherlands and the number of cases in which damage is detected, this appeared to be unavailable. Only in second instance some insight was provided, but an overall picture was not given, let alone some idea of any damage to the children. The lack of information is partly because not all children are in sight of the government; they live underground. This is partly because the children who are in the sight are obviously not appropriately individually registered but usually registered with their parents' business. Also, the number of rejected asylum children could not be generated from the system at the request of the Ombudsman for Children. The Ombudsman for Children finds it worrisome that a clear overview of the number of children and possible damage or degree of settlement is missing. The Ombudsman for Children wishes that more information becomes available. Finally, we note that Minister Leers in the letter of February 8, 2012 states that there is no "waiting for deportation" because the family itself must leave. Here the Minister ignores the position of the child. Waiting indeed, for action from his or her parents, governmental action, clarity about the future.

Chapter 8 Facts and Figures

The answers from the Minister as discussed in chapter seven, reflect the facts and figures that are known to the government in early 2012. The figures relate to children who are in the Netherlands with their parents and not unaccompanied minors. In addition, according to figures from the COA show that on November 1, 2011 4,961 minors were staying in a shelter location.²⁹ This number is not broken down by duration or stage in the procedure. Furthermore, information from NIDOS shows that late January 2012 approximately 2,400 unaccompanied minors were in the Netherlands.

This leads to the following overview:

Total foreign children in shelter (in and out procedure)	4.961
Total foreign children in shelter in procedure	unknown
> 4 years in Netherlands	420
> 6 years in Netherlands	250
> 8 years in Netherlands	170
Total foreign children in shelter outside procedure	660 ³⁰
Total foreign children outside shelter in procedure	unknown
> 4yrs	1.030
> 6yrs	690
> 8yrs	540
Total foreign children outside shelter, outside procedure	unknown
Foreign children with damage	unknown
Average length of stay in the Netherlands	unknown
Total number of unaccompanied minors	2.400

The figures from COA are dated November 1, 2011, and from NIDOS late January 2012, and those from the Minister dated early 2012. Because of the slight difference, the figures are read combined.

²⁹ Website COA, dated Febuary 20, 2012, <http://www.coa.nl/NED/website/page.asp?menuid=101>.

³⁰ 220 foreign children in VBL[Freedom-restricting centre] plus 420 foreign children from the GL.

Chapter 9 Conclusion

The Ombudsman for children received many signals from foreign children about the situation in which they find themselves. These signals prompted an investigation. The Ombudsman for Children is startled of what has emerged from this study about the seriousness of the problem and the likely extent of it. With these research results the Ombudsman for Children therefore sees a number of serious shortcomings in the immigration policy. The interests of the child should indeed be a primary consideration and should prevail in the rule. The interests of the child as reflected in the right to development, identity and health and need to be weighed systematically. The Netherlands protects the interests and rights of foreign children insufficiently. This is evidenced by the following:

1. In assessing an application for residence, too little importance is given to the position and interests of the child. This applies to unaccompanied minors, but perhaps even more to children with parents that are coming to or are in the Netherlands: they only have a secondary interest in the application of their parents and their interests may be different from their parents. The interests of the child, as reflected in the right to development, health and identity, should prevail in the rule and are supposed to be a criterion, weighed separately with each decision in relation to the other interests. In addition, child specific circumstances could constitute a reason for granting residence. This applies to the proceedings with the IND as well as in court. With some exceptions, this is not happening at the moment.
2. The Dutch government applies double standards. The Netherlands has - partly on the basis of Article 2 of the Convention - a duty of care to all children residing on Dutch territory, regardless of status. However, the interests of children are much better guaranteed in the family and juvenile (criminal) law than in immigration law. This is reflected, among others, in the possibility to engage an independent expert to assess the best interests of the child, such as the Council for Child Protection, in decisions that affect children in the family and juvenile (criminal) law. A juvenile court will then judge within the family and juvenile (criminal) law in legal proceedings involving minors, in immigration cases involving minors this is only an administrative court. The administrative court judge does not have the expertise of a juvenile court judge and can also not substantively weigh the interests, because the administrative court decisions may only be marginally assessed. Now that the decision does not mention the interests of the child, even this marginal assessment is currently impossible.
3. It follows from international and national scientific research that foreign children are at high risk of severe clinical damage from lengthy procedures. This undermines the right to a healthy development and the highest attainable health. Because of the associated long-term residence, children can strengthen the ties

with the country and largely derive their identity from this. For this reason, deportation can be damaging and contrary to the right to development and own identity. These scientific findings about (expected) damage therefore stress the need to look at the interests of foreign children. Clinical damage or effects of the establishment of roots are, however, not independent criteria by which residence may be granted. They are not even measured or assessed. This is inconsistent with the children's rights and with respect to the establishment of roots also with the European law. That provision states that the bond with a host country should be taken into account and can play a major - if not decisive – role.

4. The Dutch government has no idea of the exact extent of the problems for foreign children. There is no complete picture of the number of foreign children staying in the Netherlands. Nor is it known how long these children are already in the Netherlands, if they have been damaged as a result of the lengthy procedure and uncertainties and to what extent there is establishment of roots. Also, the Dutch government does not know how long children have been in the Netherlands when they are deported and how they are doing since their return to the country of origin (of the parents). The lack of knowledge about the situation of foreign children in the Netherlands is unacceptable for the Ombudsman for Children as the Netherlands also has a duty of care under the obligations deriving from Articles 6, 8, 22 and 24 of the UNCRC. Without insight into the situation, it is not possible to develop a policy that does justice to foreign children.
5. There are large groups of children who have lived in the Netherlands in uncertainty for years. The prolonged stay in the Netherlands may arise from actions by the parents and/or the government, but is certainly not due to the child. Every now and then some foreign child steps out of the shadows of anonymity, but many are waiting outside of the limelight, uncertain what the future will bring. This requires a structural solution for this group. The discretionary power of the Minister is inappropriate here. In addition, damage and establishing roots are in itself no criteria for discretionary power. Furthermore, the power may lead to inequality and assessment is not possible. Finally, it must be prevented that other children end up into this hopeless situation in the future.
6. At this time, at least 1,400 foreign children have been waiting for clarity for four years or more, 900 foreign children have been waiting for six years or more and more than 700 foreign children for eight years or more. Their future cannot start. Of these children, it can be assumed that they are to a greater or lesser extent rooted in Dutch society. With regard to scientific research, there is also a good chance that many of them already have been damaged. This is unacceptable and needs to stop. These children need immediate clarity about their situation.

Now that the problems and shortcomings have been mapped in the policy, the immigration policy can and must improve. A first step has already been taken in adjusting the procedures. This makes it impossible to endlessly "stack" procedures and will speed up future prospects for a child. This is, however, not enough because the procedures not only need to be fast, they also must be done carefully keeping the interests of the children in mind.

In the next chapter, the Ombudsman for Children makes a number of recommendations that should lead to a better guarantee of the rights of foreign children and an obligation under the CRC that the Dutch government needs to fulfil towards these children. These recommendations are not limited; consider the recommendations as a second step to improvement in the future, a future that children no longer have to wait for endlessly.

Chapter 10 Recommendations

The Ombudsman for Children makes the following nine recommendations to better align the immigration policy with the CRC.

10.1 Recommendation 1

Give children who come to the Netherlands with their parents or who are born in the Netherlands, an independent position within residence permit procedures and assess their entitlement to a residence permit on the individual merits within the application for a residence permit for the parents.

Children's interests may be substantially different from the interests of their parents. This may already be the case upon entering the Netherlands, but becomes generally more significant as the stay continues in the Netherlands. Where the interests with an entry or birth in the Netherlands run more or less in parallel, this can be changed by the fact that children in the Netherlands – more so than their parents - participate and get rooted in the Dutch society. They derive their identity and development from Dutch society. It can therefore not be taken for granted to regard children as an extension of their parents and to weigh the interests and rights of children separately. Children have the right that their interests are assessed systematically and substantively on their own merits: from the moment they arrive in the Netherlands and especially as their stay continues.

The recommendation does not necessarily mean that there should be an independent procedure for children. If their parents have begun a procedure, they can follow that procedure. The recommendation does mean that children within that procedure must have an independent position. How this independent position takes shape, follows from the other recommendations.

10.2. Recommendation 2

Take the interests of children, and in this light damage and the establishment of roots of children, as an independent assessment criterion within the immigration policy.

Having an independent position is step one, assessing this independent position is step two. The interests of the child are at present not an explicit assessment criterion within the immigration law, while under the CRC the best interests of the child in any decision that affects the child must be weighed systematically. This can be accomplished by including the interests of the child as an assessment criterion.

The interests of the child can be substantiated further on the basis of the ICRC. In the context of the immigration policy, this can include the rights to development, identity and health. The point is whether there is (expected) damage to the child (with deportation). With every immigration law decision it must be weighed whether the child is damaged or if it has established roots, and what decision is therefore best compared to other interests. Information about the child should also be part of the dossier.

10.3 Recommendation 3

Let children be assessed individually and evaluated by an independent expert on his or her well-being, including damage and the establishing of roots as often as necessary to reflect adequately the interests of the child within a residence permit procedure. Develop a measuring instrument in this regard.

Foreign children are in a vulnerable position. They often live in an environment that cannot provide sufficient support in their development. They must therefore be closely monitored, just like Dutch children growing up in difficult and vulnerable situations. Assessing whether there is any (clinical) damage or establishment of roots is a specialist question that needs to be answered by experts. The medical check of minors in the current procedure has proved insufficient to detect damage in various forms (other than the purely physical damage). Also, it offers no possibility to permanently monitor the state of health of the minor. The medical care provided in shelter locations is not aimed at mapping concerns about a child for the purpose of the procedure. However, there is a need for this, since different research shows that minors frequently have to deal with various forms of damage and that the risk increases as they are longer in the Netherlands.

Experts are currently preparing reports on the mental health and development of minors, but the government is sceptical. The letter of Minister Leers dated September 13, 2011 points out the fact that these reports are not objective and statements concerning the country of origin and the welfare of the child are not sufficiently substantiated by objective data. In order not to get stuck in discussions about reliability – which do no good to the interests of children in any way - the Ombudsman for Children recommends that the Minister develops a standard

procedure and engages an independent expert who may comment about the (mental) health of the minor and any (expected) loss, in any case where minors are involved.

An independent expert, such as a child psychologist or psychologist, should examine a child as early as possible in the procedure and look at the general welfare and development of the child and, next to the physical damage, examine other forms of damage and the establishing of roots. This examination should be repeated as often as necessary for a decision in the permit procedure - or if there are signs that call for examination - to monitor how things are going with the child and draw a clear picture. The research could, for example, be carried out under the direction of the Council for the Child, since they also have such a research and advisory function in the family and juvenile (criminal) law and have the expertise to provide an overall picture of the interests of the child. This report should be an integral part of a dossier of the child and/or its parents, so that the court can assess the IND's decision.

Furthermore, a measuring instrument should be developed for the independent experts to work with, so any advice for anyone comes about in the same way and is transparent. Such instruments are already available and could provide guidelines such as the Best Interests Determination and the Best Interests Assessment of the UNHCR or the BIC model. Both of these are discussed separately below.

Best Interests Determination and Assessment

The United Nations established the UNHCR Guidelines on Determining the Best Interests of the Child. It describes two procedures to determine the most appropriate decision for unaccompanied minors or minors who are separated from their parents: the Best Interests Determination and the Best Interests Assessment. These procedures are described in the Directive:

A “best interests determination” (BID) describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option. A “best interests assessment” is an assessment made by staff taking action with regard to individual children, except when a BID procedure is required, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment can be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.

In a BID procedure one or more child welfare officer(s) collect all relevant information. This is then submitted to a panel that will decide which solution is best for a child. The guidelines state the information to be collected and which participants must comply with the BID process. There are also checklists included for those involved, including the checklist for child welfare officer (Annex 7 to the guidelines), Checklist for BID supervisor (Annex 8 to the guidelines) and a list of factors that determine a child's "best interests" -checklist (Annex 9 to the guidelines). This latter checklist is for illustration included as Annex 2 to this report.

The use of the BID (or BIA) procedure is not to say that the interests of the child always have priority over all other interests. The procedure is designed to weigh all interests carefully and to ensure that the interests of the child are highlighted.

The BID process is an internationally recognised instrument. Although it is aimed at the two aforementioned specific minors groups, but it can just as well be the basis for a decision model concerning foreign children in general. Also, at this time the European Union is working on a modified version. This version might provide more guidelines for a measuring instrument in immigration cases in the Netherlands.

Best Interest of the Child Model

The Best Interest of the Child (BIC) model is an instrument that after years of study has been designed by Kalverboer and Zijlstra.³¹ The BIC model is included in annex 3 to this report. The BIC model can be used in alien affairs, but also formed the basis for the BIC Questionnaire that determines what the best place is to live for minors after detention of a civil custodial placement.³² BIC Questionnaire proved a valid and reliable instrument. The BIC model would therefore provide guidance for an instrument in immigration cases in the Netherlands.

10.4 Recommendation 4

Let the IND include in its decisions explicit and transparent balancing of the interests of the children in relation to the other interests, where the expert opinion is an important factor.

There is an underlying balance of interests from the decision of the IND to providing a residence permit. In addition to the interests of the child other important matters play a role, such as the interest of the state to maintain an effective migration policy. Article 3 of the Convention describes the importance of the child as 'a primary consideration' in taking decisions affecting children. The Ombudsman for Children believes that this is currently insufficiently reflected in the decisions prepared by the IND.

³¹ See among others M.E. Kalverboer, A.E. Zijlstra and E.J. Knorth (2009), 'The Development consequences for Asylum-seeking Children living with the prospect for five years or more of enforced return to their home country', *European Journal of Migration and Law*, 2009, volume 11, issue 1.

³² Kalverboer, M.E., M. ten Brummelaar, W. Post, E.A. Zijlstra, A. Harder and E.J. Knorth (2011), 'The Best Interest of the Child-Questionnaire, reliability and validity: Preliminary data on the question 'where to live after detention or secure treatment?', *Criminal Behaviour and Mental Health*, 2011. 10.1002.

The decisions of the IND do not show how the interests of the child are determined and how they are weighed against other interests. The Ombudsman for Children advises the Minister therefore to instruct the IND to include these interests explicitly in the decision, so that it is clear how the interest of the child have been weighed in the decision to grant or not to grant a residence permit and this can be assessed by the court. The independent expert should be assigned a formal research and advisory function. The evaluation of the expert should be an important factor and must not be passed unmotivated.

10.5 Recommendation 5

Examine the possibilities to give juvenile courts a role in immigration cases involving children.

Involving a juvenile court judge in the judicial proceedings concerning the stay of a child provides an opportunity to better ensure the rights of the child. A juvenile court judge is able to consider the interests of the child from a pedagogical perspective. For that reason a juvenile court judge is chosen for matters within the family and juvenile (criminal) law. The Ombudsman for Children considers that no distinction should be made between these children and foreign children based on the residence status of the parents. Therefore, the Ombudsman for Children advises the Minister to explore the possibilities for this, for example, in consultation with the judiciary.

10.6 Recommendation 6

Formulate a transitional arrangement for the large group of children that arrived here with their parent (s) prior to July 1, 2010 (commencement of the new asylum procedure) in the Netherlands or whose parents arrived before that date.

Recommendations 1 to 6 show an improvement of the immigration policy regarding children, their rights and interests. With these - and perhaps other - changes in combination with the tightened procedures, distressing cases should be prevented in the future. That sounds great, but not for the large group of children who has lived in the Netherlands and has its roots here. It is highly undesirable that these children wait any longer in uncertainty. A transitional arrangement that reflects their interests and rights should be drawn up for them. The Ombudsman for Children urgently advises the Minister to assess the children- who entered before July 1, 2010 (or their parents) - individually this year by an independent expert, such as the Council for Child and/or orthopedagogues, examining the individual degree of damage and the establishing of roots. Subsequently a decision that clarifies the future needs to be made quickly.

10.7 Recommendation 7

Formulate - in anticipation of the new unaccompanied minor policy - transitional arrangements for unaccompanied minors who entered the Netherlands under the current policy.

The reassessment of the unaccompanied minor policy that the Minister has announced must ensure that unaccompanied minors remain in the Netherlands for a shorter amount of time if they have no prospect of permanent residence. This offers no solution to the unaccompanied minors who have been in the Netherlands for years now. As for the children who are here with their parents, there should also be a transitional arrangement for these children. Also for this group the Ombudsman for Children urgently advises the Minister to assess the children individually this year by an independent expert, such as the Council for Child and/or orthopedagogues, examining the individual degree of damage and the establishing of roots. Subsequently a decision that clarifies the future needs to be made quickly.

10.8 Recommendation 8

Intensify efforts for a prompt and careful return of exhausted asylum families and unaccompanied minors and monitor the effectiveness of the return policy.

If a family or unaccompanied minor cannot stay in the Netherlands, all efforts must focus on a quick and careful return. A large part of the responsibility for this lies with the parents, but the government also plays an important role in this. With support from the resources already provided and, if necessary, other appropriate means, a careful return can be set in motion. An independent opinion of an expert on the welfare of the children and what is in their interest, could have a positive effect on the willingness of the parents to return to their country of origin. After all, the interests of the child must come first, even if this means returning. If this is established, the parental responsibility will grow to substantiate it. Parents also have to realise/start realising this. In addition, it should be monitored how the families and unaccompanied minors are doing after returning: if the return is successful, what factors contribute to this and, is there is a link between a successful return and the duration of the stay in the Netherlands?

10.9 Recommendation 9

Make sure that the government has better insight into the number of foreign children in the Netherlands and the duration of their stay in the Netherlands.

The study showed that information regarding the total number of foreign children in the Netherlands, their average length of stay and their welfare is not available or incomplete. This is partly due to incomplete records, because children 'free-ride' on their parents' file and are not counted separately, partly because some information is not recorded entirely. Besides the

fact that the Ombudsman for Children feels it is very undesirable that the government has no overall picture of this group of children that it is responsible for, facts and figures are crucial to develop appropriate policies for these foreign children. The Ombudsman for Children gives the urgent advice to better monitor these children for their number, length of stay, welfare and other relevant aspects.

Chapter 11 In conclusion

The Netherlands bears a great responsibility for all children who are in the Netherlands, regardless of their status. As the Ombudsman for Children I feel greatly responsible, because behind those cold statistics there are children of flesh and blood who lead uncertain lives. Lives in which it is difficult to dream about a future, let alone materialise that future. Children should not be swallowed up in long-term procedures and move numerous times to some other shelter. Children should be able to endlessly play, laugh and romp, in short: should just be happy. This opinion, 'Waiting for your Future', advocates for a different design of the immigration policy for children. A policy in which the interests of the child are paramount, in which the child receives an individual assessment, and in which the child has a voice and is actually heard. No one benefits from years of administrative procedures, especially children. Of course parents have the primary responsibility in this, but the government must ensure that children do not become victims of decisions made outside of them. Children are entitled to a careful procedure, where their own interests are taken into account and their rights are protected at all times, now and in the future. The recommendations in this opinion speak for themselves. This government can make a difference for these children and contribute to a future that they no longer have to wait for.

Marc Dullaert

The Ombudsman for Children