

# Durable Solutions for Separated Children in Europe

## National Report: The Netherlands



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## List of abbreviations used in this report

BIC-model	Best Interest of the Child Model
BIC-Q	Best Interest of the Child Questionnaire
BIC-S	Best Interest of the Child Self-Report
CJEU	Court of Justice of the European Union
COI	Country of Origin Information reports
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
GC 14	General Comment No. 14
IOM	International Organisation for Migration
SCEP	Separated Children in Europe Programme

## Introduction

### 1.1 Separated Children

Separated children, like adults, flee their countries for a number of reasons. Some travel to join their families who have previously migrated. Others flee war, civil unrest, natural disaster or persecution. Some children migrate in search of work, opportunity, education or an improved standard of living. Additionally, children may migrate unaccompanied to escape a difficult family environment. This can involve sexual or physical maltreatment or the prospect of forced marriage. Certain forms of persecution are specific to children, and especially to female children. Others may migrate to escape female genital mutilation, child marriage or conscription into formal or informal armed forces.<sup>1</sup> Some separated children are also sent by their parents to pursue a better life, both for the child and the family.<sup>2</sup>

A significant body of research has emerged over recent years around the specific vulnerability of separated children.<sup>3</sup> The literature argues that separation from persons responsible for the child's protection and physical and emotional well-being can be traumatic for children and increase their vulnerability,<sup>4</sup> contending that separated children are at a high risk of experiencing:

- Sexual exploitation and abuse including early/forced marriage and human trafficking;
- Military recruitment;
- Child labour including forced domestic labour;
- Detention;
- Discrimination;
- Neglect;
- Violence.<sup>5</sup>

Separated children, once in the country of arrival, are still particularly vulnerable because they lack essential adult care and the traditional support systems of parents and family.<sup>6</sup> It is for this reason that the European Commission and others argue that a durable solution for separated children must be found as a matter of priority.<sup>7</sup>

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1. See, generally: UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> (accessed:9 March 2015).

2. European Migration Network, Unaccompanied minors – an EU comparative study, May 2010, Available at: [http://www.refworld.org/topic,50ffbce4c9,50ffbce4117,51b0788e4,0,EU\\_EMN.html](http://www.refworld.org/topic,50ffbce4c9,50ffbce4117,51b0788e4,0,EU_EMN.html) (accessed: 07 August 2014).

3. A separated child is a child under 18 years of age who has been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Children are at an increased risk of being separated from their families or customary caregivers during the chaos of conflict, flight and displacement. Notably some do not travel alone but in the company of others, potentially including traffickers or smugglers. See: UN Committee on the Rights of the Child General Comment No. 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin, Committee on the Rights of the Child, 2005 (CRC/GC/2005/6).

4. See, for example: Russell, S., 'Unaccompanied Refugee Children in the United Kingdom', International Journal of Refugee Law 11 (1), 1999. And: Bhabha, J. and Young, W., 'Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines', International Journal of Refugee Law 11 (1), 1999.

And: Bhabha, J., 'Demography and rights: women, children and access to asylum', International Journal of Refugee Law 16 (2) 2004.

5. See, generally: Bhabha, J., Child Migration and Human Rights in a Global Age, Princeton: Princeton University Press 2014. See, for example: Communication from the Commission to the European Parliament and the Council - Action Plan on Separated children (2010 – 2014) SEC (2010)534 /\* COM/2010/0213 final and Bhabha, J. and Young, W. (1999) Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines. International Journal of Refugee Law 11(1).

6. See, generally: Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> (accessed: 9 March 2015).

7. COM(2012)554 final, Report from the Commission to the Council and the European Parliament, Mid-term report on the implementation of the Action Plan on Unaccompanied Minors, 28 September 2012.

## 1.2 Durable Solutions: International Law and Guidance and the European Union

The European Commission, in their 'Mid-term report on the implementation of the Action Plan on Unaccompanied Minors', identified 'prevention, reception and identification of a durable solution' as the main strands to focus on in respect of promoting a European-wide approach to the care of separated children, reiterating the need for European harmonisation.<sup>8</sup> In order to harmonise the aforementioned strands across Europe, there must be an understanding of the key principles and terminology at play. In the case of 'durable solutions', there is a general lack of clarity around the term.

'Durable solutions', in the context of separated children, appears in a number of comments, reports and guidelines. The European Commission,<sup>9</sup> UNHCR,<sup>10</sup> the Separated Children in Europe Programme (hereinafter: SCEP),<sup>11</sup> the Committee on the Rights of the Child,<sup>12</sup> the European Commission's Life Projects, UNICEF's Child Notices,<sup>13</sup> the Core Standards for guardians of separated children in Europe, the Fundamental Rights Agency, UNHCR and UNICEF's Safe and Sound<sup>14</sup> report as well as European legislation<sup>15</sup> suggest that a durable solution that is in the best interests of the child should be found. UNHCR further notes that this principle applies both in the case of a child who has been granted asylum and one who has received a negative decision in relation to an asylum claim. UNICEF and UNHCR note the importance of considering child-specific protection needs in the effort to determine durable solutions. Particularly a durable solution should include the provision of international protection (refugee or subsidiary/complimentary protection).<sup>16</sup> Furthermore, such a solution should be identified on a case-by-case basis and all aspects of the case should be duly weighed and considered in respect of the best interests of the child.<sup>17</sup> SCEP and the Core Standards for guardians of separated children in Europe go on to argue that the best interests of the child must be determined in the short and long term. The ultimate aim regarding the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, considers the child's own view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated, including through exploring the possibility of family reunification in the country of arrival, a third country or in their home country.<sup>18</sup>

The Life Projects, as published by the Council of Europe, argue that the solution must be 'lasting'<sup>19</sup> for both

8. COM(2012)554 final, Report from the Commission to the Council and the European Parliament, Mid-term report on the implementation of the Action Plan on Unaccompanied Minors, 28 September 2012.

9. Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors. Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies.

10. UN High Commissioner for Refugees (UNHCR), Field Handbook for the Implementation of UNHCR BID Guidelines, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html> (accessed: 9 March 2015).

11. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> (accessed: 9 March 2015).

12. UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> (accessed: 9 March 2015).

13. See, for example, UN Children's Fund (UNICEF), Child Notice Afghanistan 2013, January 2013, available at: <http://www.refworld.org/docid/5124c09e2.html> (accessed: 9 March 2015).

14. UN High Commissioner for Refugees (UNHCR), Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014, available at: <http://www.refworld.org/docid/5423da264.html> (accessed: 9 March 2015).

15. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU, available at: <http://www.refworld.org/docid/50ec1e172.html> (accessed: 30 September 2014). Preamble: Recital 23 & Article 16(2).

16. UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> (accessed: 9 March 2015).

17. UN High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, available at: <http://www.refworld.org/docid/3ae6b3360.html> (accessed: 30 September 2014).

18. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> (accessed: 30 September 2014), p. 36. See also: Closing a Protection Gap, 'Core Standards for Guardians of Separated Children in Europe', available at: <http://www.corestandardsforguardians.com/>.

19. Drammeh, L., 'Life Projects for Unaccompanied Migrant Minors: A handbook for front-line professionals', Council of Europe Publishing, October 2010, available at: [http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects\\_GB.pdf](http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf) (accessed: 30 September 2014), p. 9.

Member States and the minors themselves, meeting the challenges arising out of the migration of separated children.<sup>20</sup> The Fundamental Rights Agency argues that a durable solution must also ensure that the child's rights are secured into the future.<sup>21</sup> The Committee on the Rights of the Child holds that regard must be paid to the child's identity when making a Best Interests Determination. As required by European law, such a determination should take into account the child's nationality, upbringing, ethnic, cultural and linguistic background,<sup>22</sup> particular vulnerabilities and protection needs and the child's views in accordance with his/her age and maturity,<sup>23</sup> including when determining his/her accommodation arrangements.<sup>24</sup> The Life Projects contends that the purpose of considering these factors is to develop the capacities and potential of each child, to support the development of independence, responsibility and resilience, and to enable each young person to become an active member of society whether they remain in the host country or return to the country of origin.

Given the multifaceted nature of determining a durable solution, there is a need for the approach to be multi-disciplinary.<sup>25</sup> Additionally, the above-named reports and guidelines argue that provision must be made for progress, monitoring and reviewing or revising the project both routinely and in response to changes in the minor's situation.

**In summary, the existing guidance, research and projects tell us that a durable solution is a lasting solution, determined as early as possible with the possibility of review and revision, for the minor and the responsible country, taking into account the child's individual best interests by considering the child's: family circumstances; background, including nationality, religion and culture; safety, including risks of trafficking; and particular vulnerabilities and protection needs and a child's views in accordance with their capacity.**<sup>26</sup>

However, the existing research does not provide a picture of what durable solutions determinations look like in practice. There are some exceptions; the national and international reports for the Core Standards for Guardians of Separated Children in Europe project and the FRA Handbook both include State practice in their commentary. Both projects, however, only deal with durable solutions on the periphery. It is the aim of this project to look at the existing insights and expand upon them with a strict focus on durable solutions in practice in Belgium, Cyprus, Germany, Greece, Ireland, Malta, The Netherlands, Slovakia, and the United Kingdom. This project seeks to establish what the term 'durable solution' means in practice across Europe in order to find proactive and innovative examples of best practice.

### 1.3 Project Methodology

Desk research was conducted to create a framework for the term 'durable solution' in caring for separated children in Europe. This was done by reviewing existing conceptualisations of the term in the Convention on the Rights of the Child (hereinafter: CRC), General Comment No. 6 and the relevant directives.

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20. Drammeh, L., 'Life Projects for Unaccompanied Migrant Minors: A handbook for front-line professionals', Council of Europe Publishing, October 2010, available at: [http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects\\_GB.pdf](http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf) (accessed: 10 December 2015), p. 9.

21. European Union: European Agency for Fundamental Rights, Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, June 2014, available at: <http://www.refworld.org/docid/53b14fd34.html> (accessed: 11 December 2015), pp. 92-98.

22. Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html> (accessed: 10 December 2015).

23. UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> (accessed: 10 December 2015), pp. 79-94.

24. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, Article 30(3), pp. 9-26, available at: <http://www.refworld.org/docid/4f197df02.html> (accessed: 10 December 2015).

25. Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors. Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies. A Life Project is a plan, drawn up and negotiated between the minor and the authorities in the host country. It is a mutual commitment that outlines step-by-step goals and defines the responsibilities of the minor and the relevant authorities.

26. Project definition.



Additionally, a review of the literature and case law was carried out. The framework and brief literature review is included in the introduction of the national reports for each of the nine partners and is expanded in the international report.

The Irish Refugee Council led this project. The School of Applied Social Science at University College Dublin and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) in Ireland acted as consultants to the project and fed into its development and interim evaluation. Both also sat on the steering committee. The Separated Children in Europe Programme was also consulted and members provided feedback on the outline of the research. All three parties attended a meeting in London where all national partners reviewed national findings, discussed the best way to present findings and highlight best practice and contributed to the development of the 'Guide'.

<b>Lead Partner &amp; National Stakeholders</b>	
Irish Refugee Council	Ireland
Department of Applied Social Science, University College Dublin	Ireland
Social Work Team for Separated Children of the Child and Family Agency	Ireland
<b>European Partners</b>	
Bundesfachverband Unbegleitete Minderjährige Flüchtlinge	Germany
Greek Council for Refugees	Greece
Hope for Children UNCRC Policy Centre	Cyprus
Human Rights League	Slovakia
Service Droit de Jeunes	Belgium
The Children's Society	United Kingdom
The People for Change Foundation	Malta
Defence for Children - ECPAT	The Netherlands
<b>In Cooperation With</b>	
Separated Children in Europe Programme	

## 1.4 National Methodology

### National advisory panel

The national advisory panel consisted of six representatives of organisations working (partly) on the issue of migration and separated children. The members of the advisory panel were chosen because their expertise was considered relevant for this project. In the table below the names of the organisations and representatives being part of the advisory panel can be found:

<b>Organisation</b>	<b>Representative</b>
UNHCR, The Netherlands	René Bruin
IOM, The Netherlands	Pieter Maas
NIDOS	Germa Lourens
University of Groningen, Study Centre for Children, Migration and Law	Elianne Zijlstra
UNICEF, The Netherlands	Majorie Kaandorp
Defence for Children – ECPAT, The Netherlands	Laura Bosch

### **Aim of the national report**

The aim of this national report is to assess whether, how, and to what degree durable solutions for separated children are determined in The Netherlands. This research will also describe the (possible) actors involved with regard to the determination of durable solutions, and help to identify interesting practice.

### **Desk research, interviews and focus groups**

In order to reach the aim of the national report as described above, extensive desk research to collect relevant studies, recommendations, case law and parliamentary questions has been carried out. Furthermore, the majority of the content of this report has been based on the information collected during one-to-one interviews with service providers and stakeholders (possibly) involved in determining durable solutions for separated children residing in The Netherlands.

The table below shows the different representatives of different institutions and organisations who participated in the interviews. Their views and suggestions are incorporated anonymously in this national report. A summary of the questions asked during the interviews can be found in appendix 1.

### **Representatives of different institutions and organisations that participated in the interviews**

<b>Organisation/Institution</b>	<b>Number of interviewees</b>
Judges	2
Repatriation and Departure Service	2
Immigration and Naturalisation Service	1
UNHCR The Netherlands	1
IOM The Netherlands	2
NIDOS	2
Study Centre for Children, Migration and Law	2
Beyond Borders	1
Lawyers	1
UNICEF The Netherlands	2
Defence for Children - ECPAT The Netherlands	1
Leiden University	2
Child Protection Board	1
Ministry of Security and Justice	2

### **Focus group with young people**

A meeting with four separated children was organised on April 7 2015 in order to discuss the issue of determining durable solutions for separated children in The Netherlands, and to receive their input for this project. The children participating in the focus group with young people were boys between fifteen and seventeen years old, and from the following countries of origin: Ivory Coast, Eritrea, and Angola. The children were all under guardianship of Nidos and residing in foster care (OWG Plus). A summary of the questions asked and the issues discussed during the focus group can be found in appendix 2.

### 1.5 Project outputs

The international report is a synthesis report, which provides a framework for conceptualising the ‘durable solution’ in caring for separated children in Europe.<sup>27</sup> Additionally, and appended to the international report, a Best Practice Guide for the Identification, Implementation and Review of Durable Solutions for Separated Children in Europe was produced.<sup>28</sup> This Guide provides a template including a checklist for those responsible for determining, implementing and reviewing the durable solution.

### Conclusion

The international project seeks to establish a framework definition for the concept of ‘durable solutions for separated children in Europe’, taking into account: existing law and guidance; other projects that deal with durable solution planning, such as the Life Projects and Child Notices; Core Standards for guardians of separated children in Europe; and, among others, the views of young people participating in the project and practice in the nine European countries involved in the project.

The national report outlines current practice and interpretation of the concept of durable solutions in The Netherlands. This research then feeds into the wider project to produce a comparative study as described above, and to define ‘durable solutions for separated children’.

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27. Arnold, S. and others, ‘Durable Solutions for Separated Children in Europe’, 2015, available at: [http://www.irishrefugeecouncil.ie/wp-content/uploads/2014/03/international\\_report-1.pdf](http://www.irishrefugeecouncil.ie/wp-content/uploads/2014/03/international_report-1.pdf).

28. Arnold, S. and others, ‘Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe: A Multidisciplinary Approach’, 2015, available at: <http://www.irishrefugeecouncil.ie/wp-content/uploads/2014/03/toolkit.pdf>.

## 2. Building blocks for determining Durable Solutions

Determining durable solutions for separated children is a process involving many actors and many steps. However, certain conditions must be met in order to arrive at the point where determining a durable solution is possible. This section introduces the building blocks to creating space and opportunity for best interests determinations as well as durable solution planning.

Firstly, the Life Projects contend that a robust legal framework, which places the child firmly at the centre, is essential, in addition to policies that actively support any legislative measures.<sup>29</sup> Several reports argue that the legal framework must include: the provision for the appointment of representatives responsible for separated children; the allocation of legal authority to the representative to determine the child's best interests and durable solutions; and general child care law that safeguards and protects separated children.<sup>30</sup>

Secondly, the Life Projects, the FRA handbook and numerous other studies argue that guardians of separated children need to have relevant competences to be able to determine durable solutions for separated children considering their best interests.<sup>31</sup> Some reports refer to a background in social work or social care as the most relevant competency. Others argue that the role of the guardian in relation to legal aspects should be harmonised as there is a knowledge gap for guardians with regard to legislation.<sup>32</sup> Many studies also argue that in addition to the requisite qualification, relevant competencies also include targeted professional development training and courses. This might include attending training events on, among other themes, trafficking, trauma, and asylum law.<sup>33</sup>

Thirdly, a growing body of research also looks at the guardian's ability to build trusting relationships with separated children. Several reports and studies have shown that relationship-building is a critical component of determining the best interests of children. Care planning with and on the behalf of separated children is enhanced if it happens in the context of a positive relationship, based on trust.<sup>34</sup> Studies have shown that difficulties in truth-telling on the part of the child and difficulties in believing on the part of guardians have presented as barriers to determining what is in the best interests of the child.<sup>35</sup> It therefore seems important that the State must also enable the guardian to establish trusting relationships with separated children. Some reports argue that independent guardianship is one way to assist in making guardians seen as 'on the child's side' while also considering the child's best interests.<sup>36</sup>

Lastly, the same studies and reports cited throughout also highlight the vast number of important actors in the child's life. See, for example, the diagram from the FRA Handbook<sup>37</sup> and a diagram drawn by young people in a focus group for the Core Standards for guardians:<sup>38</sup>

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29. Drammeh, L., 'Life Projects for Unaccompanied Migrant Minors: A handbook for front-line professionals', Council of Europe Publishing, October 2010, available at: [http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects\\_GB.pdf](http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf) (accessed: 12 December 2015), pp. 12-13.

30. See, for example: Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities', Leiden: Defence for Children The Netherlands 2011; ENGI, 2010 Towards a European Network of Guardianship Institutions, Utrecht.

31. Ibidem, and Life Projects 2010 and Handbook 2014.

32. Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities' Leiden: Defence for Children The Netherlands 2011, available at: <http://www.corestandardsforguardians.com/images/22/335.pdf>, p. 70.

33. Ibidem.

34. See for example: Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities' Leiden: Defence for Children The Netherlands 2011, available at: <http://www.corestandardsforguardians.com/images/22/335.pdf>. See also: Arnold, S., 'Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland', Dublin: Irish Refugee Council 2011. And: Ní Raghallaigh, M., 'The causes of mistrust amongst asylum seekers and refugees: insights from research with unaccompanied asylum seeking minors living in the Republic of Ireland', *Journal of Refugee Studies*, 27 (1):82-100 2013.

35. Ibidem.

36. Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities' Leiden: Defence for Children The Netherlands 2011, available at: <http://www.corestandardsforguardians.com/images/22/335.pdf>.

37. Handbook 2014, p. 91.

38. Arnold, S., 'Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland', Dublin: Irish Refugee Council 2011, p. 61.



39

The above-mentioned studies argue for a multidisciplinary approach to determining best interests and durable solutions and making other decisions.<sup>40</sup> These prerequisites to determine durable solutions are discussed throughout. This report discusses to what extent these building blocks are in place in The Netherlands. The international report further deals with the issue.

39. Inside circle: 'Us' representing the young people in the focus group. Outside circle: 'Church, Hostel workers, Lawyers, Social workers, Project workers (aftercare workers), Police, General Practitioner, Community Groups, Foster Families, Teachers' representing those involved in the lives of the separated children in the focus group in Ireland.

40. See: Life Projects 2010 p. 13 and Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities' Leiden: Defence for Children The Netherlands 2011, available at: <http://www.corestandardsforguardians.com/images/22/335.pdf>.

### 3. Country information

For the purposes of this research, that is, investigating the durable solution process for separated children in The Netherlands, separated children are: “under eighteen years of age, outside their country of origin and separated from either their parents or their previous legal, or customary primary caregiver.”<sup>41</sup> A similar definition can be found in the Handbook for Front-Line Professionals that was published as a result of the ‘Life Projects for Unaccompanied Migrant Minors’ of the Council of Europe<sup>42</sup> and in General Comment No. 6 of the UN Committee on the Rights of the Child.<sup>43</sup>

Before setting out the country information relevant for investigating whether, by whom and how durable solutions for separated children in The Netherlands are determined, it is important to point at the fact that the term ‘separated child’ is not used by the government or in national law. Instead, the government distinguishes between separated children with a third country nationality (unaccompanied minor aliens), and separated children with a nationality of a Member State of the European Union (unaccompanied minors).

As laid down in article 1 of the Dutch Aliens Act 2000 an alien is: “any person who does not have Dutch nationality and who is not treated as a Netherlands national by virtue of any provision of law.” According to the government, unaccompanied minor aliens are those separated children who do not have the nationality of a Member State of the European Union.<sup>44</sup> This definition of an ‘unaccompanied minor alien’ can also be found in directive 2001/55/EC.<sup>45</sup> Since separated children who have the nationality of a Member State of the European Union automatically have European citizenship, they should be treated as Dutch nationals, and therefore different rules and procedures are applicable to them.<sup>46</sup>

In Dutch law, the term ‘unaccompanied minor alien’ can be further defined when looking at the Dutch Aliens Circular 2000. A person is considered a minor if he or she has not reached the age of eighteen.<sup>47</sup> However, if a minor is married and this marriage is recognized under Dutch International Private Law, he or she is considered an adult from a legal point of view.<sup>48</sup> Minors are considered unaccompanied if they travel without their parents or guardian and if these persons are not already residing in The Netherlands.<sup>49</sup>

The above-described distinction between separated children made by the Dutch government can be criticized from a children’s rights perspective. Different rules and procedures are applicable to separated children depending on their nationality, and this also affects the way in which durable solutions for separated children are sought. There is a difference in the level of protection separated children receive since there are less guarantees for separated children with a third country (non-EU) nationality. This will be explained in more

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41. Separated children in Europe Programme, ‘Statement of good practice’, 4th revised edition 2009, pp. 3-4.

42. See the definition as used in the CONNECT project in which separated children are referred to as unaccompanied children, including “all unaccompanied and separated children under eighteen who find themselves outside their countries of origin, regardless of their immigration status and whether or not they have claimed asylum.” This definition was drawn from the Handbook for Front-Line Professionals that was published as a result of the ‘Life Projects for Unaccompanied Migrant Minors’ of the Council of Europe. Schippers, M., ‘Working with the unaccompanied child’, CONNECT project, 2014, p. 8.

43. General Comment No. 6 states: “unaccompanied children are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”.

44. Government of The Netherlands, ‘Asylum policy: separated children aliens’, available at: <https://www.government.nl/topics/asylum-policy/contents/unaccompanied-minor-foreign-nationals-umfns> (accessed: 28 January 2015).

45. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, article 2 (f), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>.

46. Cardol, G., *De alleenstaande vreemdeling*, series: monografieën Vreemdeling en Recht, The Hague: Sdu Uitgevers 2006, p. 9.

47. If there are doubts about the age, the Immigration and Naturalisation Service can conduct an age assessment. According to a report of the Dutch Association of Age Assessment (DA-AAR), there are several gaps in the procedure for age assessment in The Netherlands from a legal and medical perspective, see: Keunen, A.M., Roscam Abbing, H.D.C., Schumacher, J.H., ‘Age assessment of unaccompanied minor asylum seekers in The Netherlands’, Dutch Association of Age Assessment Researchers (DA-AAR) 2013, p. 28.

48. Dutch Aliens Circular 2000, B 8 para. 6.1 ad 1 and ad 2, available at: [http://wetten.overheid.nl/BWBR0012289/B8/6/61/Tekst/geldigheidsdatum\\_28-01-2015](http://wetten.overheid.nl/BWBR0012289/B8/6/61/Tekst/geldigheidsdatum_28-01-2015).

49. Ibidem.

detail in chapter 4 and 5 of this report.

### 3.1 Demographics

In this paragraph, the demographics of the year 2014 will be described (and in some cases be compared with previous years), and illustrated with different graphs and tables. In 2014, 2,670 separated children were residing in The Netherlands.<sup>50</sup> Of these minors, 55% were between sixteen and eighteen years of age, 29% were between twelve and sixteen years of age, and 16% were under twelve years of age.<sup>51</sup> In The Netherlands, regular, non-asylum requests are not registered by the government.

#### Requests for asylum

From 1996 to 2000 there was a strong increase in asylum requests by separated children in The Netherlands. From 2003 onwards, there was a decrease because of the ending of civil wars in Angola, Guinea and Sierra Leone.<sup>52</sup> In 2008 and 2009 the number of separated asylum-seeking children increased again, due to a large number of children arriving from Afghanistan and Somalia.<sup>53</sup> Since 2010, the number of separated children arriving in The Netherlands has since 2010 steadily decreased. However, in 2014 the number of arrivals spiked due to a large influx of separated children from Eritrea and Syria. In 2014, 984 separated children filed a request for asylum in The Netherlands.<sup>54</sup> However, according to a letter of the Ministry of Security and Justice, there were 960 asylum applications of separated children in The Netherlands.<sup>55</sup> The reasons behind these different statistics are unclear. Of the 960 separated children who filed an asylum request in The Netherlands, 690 children received a permit. In 2014, 10 children returned to their country of origin.<sup>56</sup> The graph below contains the number of separated children seeking asylum in The Netherlands. Below the graph the corresponding table can be found, showing the children's nationalities.

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50. De Ruijter de Wildt (Nidos) and others, 'Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States', February 2015, p. 67.

51. Ibidem.

52. Dutch Refugee Council October 2014, 'Vluchtelingen in getallen 2014', available at: <http://www.vluchtelingenwerk.nl/sites/public/Vluchtelingenwerk/Publicaties/attachments/VLUCHTELINGEN%20IN%20GETALLEN%202014%20definitief.pdf>, p. 9.

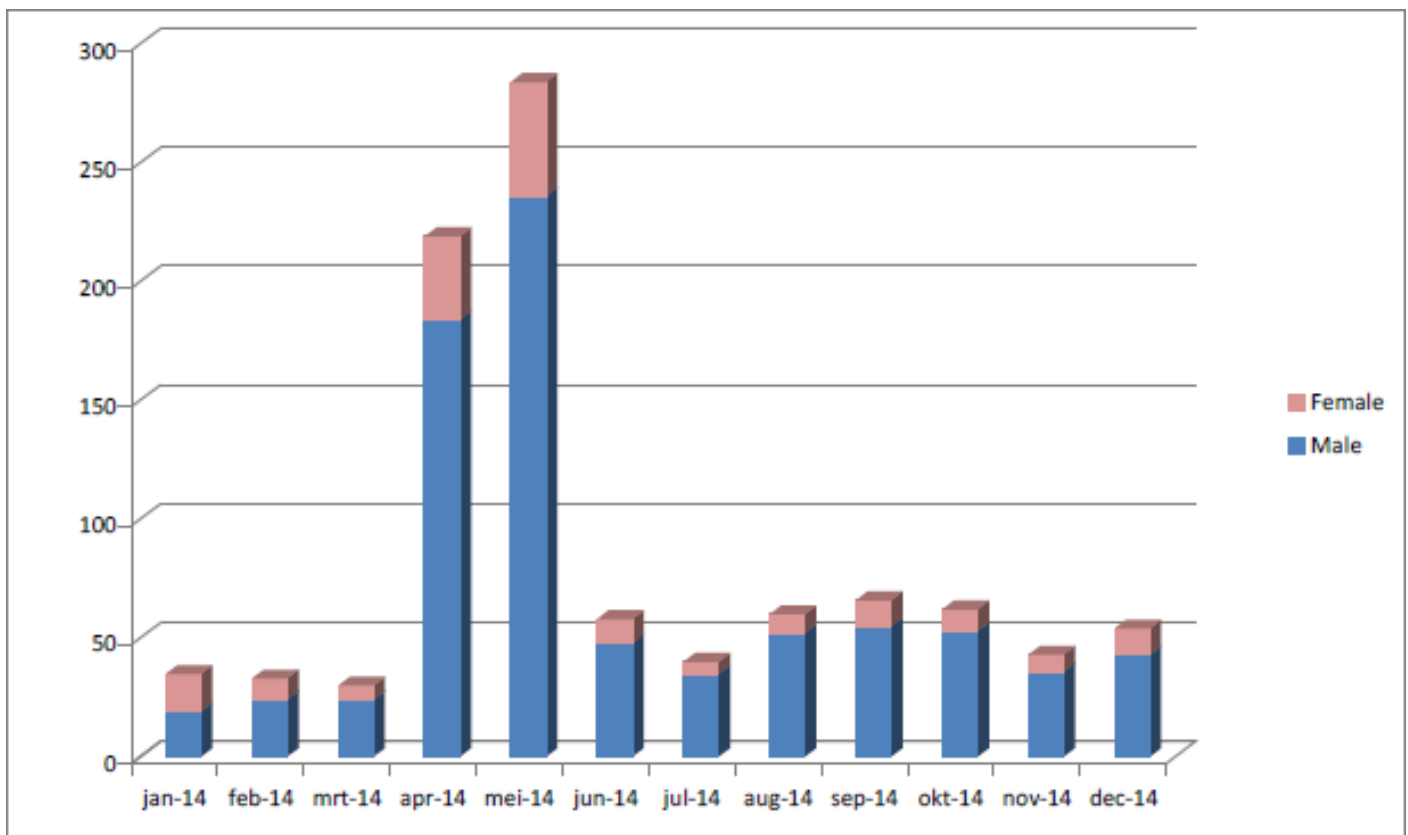
53. Ibidem.

54. INDIAC December 2014, 'Asylum trends: Monthly report on asylum applications in The Netherlands and Europe, December 2014', available at: <https://ind.nl/Documents/Asylum%20Trends%20201412.pdf> (accessed at: 11 July 2015), p. 6.

55. Defence for Children and UNICEF, 'Annual report on children's rights in The Netherlands', May 2015, available at <http://www.defenceforchildren.nl/images/68/3827.pdf> (in Dutch), p. 32.

56. Ibidem.

### Influx of indicated separated asylum-seeking children in The Netherlands in 2014.<sup>57</sup>



### Number of asylum applications of separated children arriving in The Netherlands in 2014.<sup>58</sup>

Nationality	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Eritrea	7	7	11	191	251	20	10	9	9	*	6	*	527
Syria	5	*	*	*	11	22	11	21	22	16	18	26	159
Stateless	*	*	*	*	*	*	*	8	6	13	*	9	49
Somalia	*	7	*	*	*	*	*	*	*	*	*	5	35
Afghanistan	*	*	*	*	*	*	*	6	6	*	6	*	34
Iraq	*	*	*	*	*	*	*	*	*	*	*	*	16
Guinea	*	*	*	*	*	*	*	*	*	*	*	*	14
Unknown	*	*	*	*	*	*	*	*	*	*	*	*	12
Morocco	*	*	*	*	*	*	*	*	*	*	*	*	11
Mali	*	*	*	*	*	*	*	*	*	*	*	*	10
Others	13	12	6	6	11	8	8	10	12	19	5	7	117
<b>Total</b>	<b>35</b>	<b>33</b>	<b>30</b>	<b>219</b>	<b>284</b>	<b>58</b>	<b>40</b>	<b>60</b>	<b>66</b>	<b>62</b>	<b>43</b>	<b>54</b>	<b>984</b>

\* To conceal the lowest figures, all values between 0 and 4 are replaced by an asterisk.

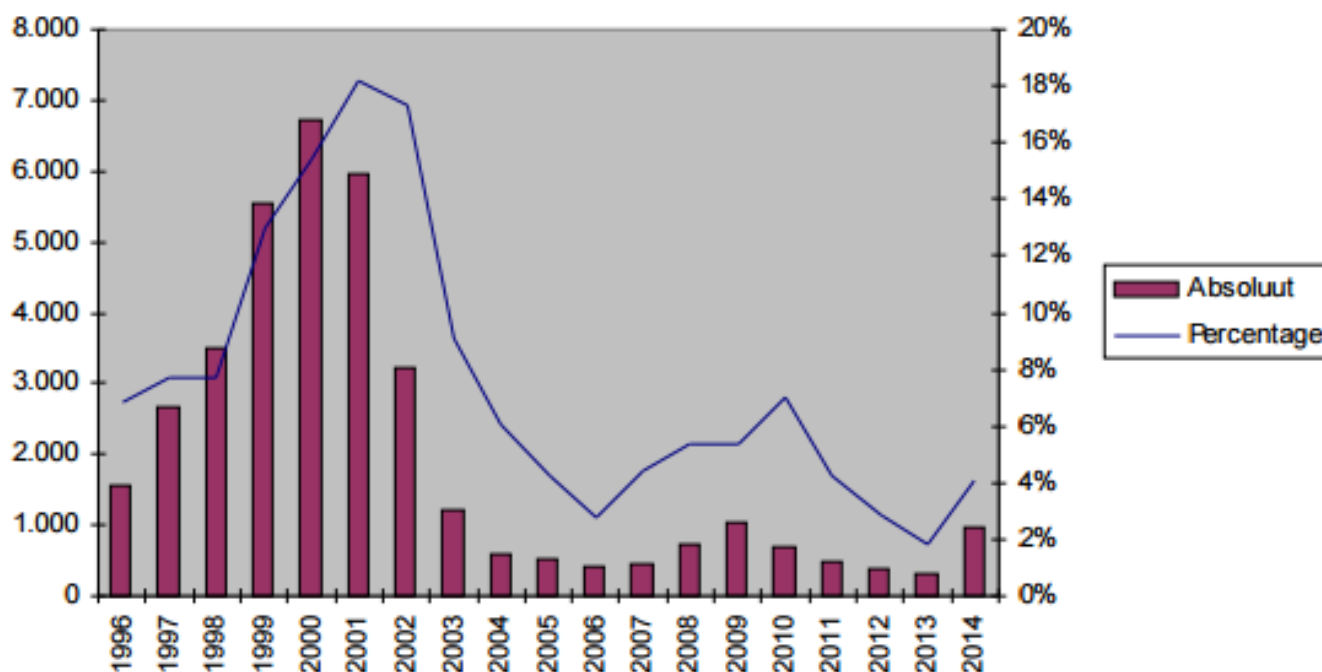
57. INDIAC December 2014, 'Asylum trends: Monthly report on asylum applications in The Netherlands and Europe, December 2014', available at: <https://ind.nl/Documents/Asylum%20Trends%20201412.pdf> (accessed at: 11 July 2015), p. 6.

58. Ibidem.



The graph below contains the number of separated children lodging asylum applications in previous years.

### Number of separated children lodging an asylum application.<sup>59</sup>



### Reception

In 2014, 1,112 separated children were residing in a reception centre of the Central Agency for the Reception of Asylum Seekers (in Dutch: Centraal Orgaan opvang asielzoekers/COA).<sup>60</sup> The first table below contains the numbers of separated children arriving at reception centres as provided by the Central Agency for the Reception of Asylum Seekers. These numbers thus represent the children that are registered at these reception centres rather than the number of separated children lodging asylum applications. The second table below contains an overview of the types of residence in which separated asylum-seeking children were placed. With regard to this second table, it is important to mention that the 291 separated children staying in the central reception centre, located in Ter Apel, are only registered in this location because they have reported at the centre. Since separated children may not spend the night in this reception facility, they only stay for a maximum of one day in Ter Apel.<sup>61</sup>

### Top 5 nationalities of separated children residing in a reception centre of COA.<sup>62</sup>

Nationality	Number	Percentage
Eritrea	535	48%
Syria	320	29%
Afghanistan	65	6%
Somalia	25	2%

59. Dutch Refugee Council, 'Vluchtelingen in getallen 2015', July 2015, available at: <http://www.vluchtelingenwerk.nl/sites/public/u152/VLUCHTELINGEN%20IN%20GETALLEN%202015%20definitiefst%2000>, p. 12.

60. Central Agency for the Reception of Asylum seekers (COA), 'Feiten en Cijfers', was accessible till December 2014 at: <http://www.coa.nl/nl/over-coa/feiten-en-cijfers>.

61. Correspondence with NIDOS, overview of separated children staying in different types of residence as per 31 December 2014.

62. Central Agency for the Reception of Asylum seekers (COA), 'Feiten en Cijfers', was accessible till December 2014 at: <http://www.coa.nl/nl/over-coa/feiten-en-cijfers>.

Guinea	16	1%
<b>Total</b>	<b>1,112</b>	<b>100%</b>

### Overview of separated children per type of residence.<sup>63</sup>

Type of residence	Number of separated children
Process reception location	295
Children's communal home	266
Small-scale housing unit	144
Campus	208
Reception family	1085
Independent	23
Other	362
Central reception centre	291
<b>Total</b>	<b>2674</b>

A process reception location (in Dutch: proces opvanglocatie, also known as POL) houses separated children between thirteen and eighteen years of age who are in an asylum procedure. The maximum period of stay in a process reception location is three months.<sup>64</sup> In a children's communal home (in Dutch: kinderwoongroep, also known as KWG) twelve dependent children between the age of thirteen and fifteen can be placed, who are under 24-hour surveillance.<sup>65</sup> A small-scale housing unit (in Dutch: kleinschalige wooneenheid, also known as KWE) houses groups of twelve more independent children who can look after themselves. In these units, three to four young people live in a group supervised by a mentor.<sup>66</sup> A campus houses children between the age of fifteen and eighteen. The above-mentioned reception facilities will be described in more detail in paragraph 3.5.

In 2014, 110 separated children have disappeared from the reception facilities, among which ten separated children residing in a protected reception facility (after disappearance these children were listed as 'left independently, without supervision').<sup>67</sup> In previous years, almost no children have disappeared from the protected reception facility.<sup>68</sup> In June 2015, questions were asked by the Christian Union (political party, in Dutch: the ChristenUnie) in Dutch Parliament about the reasoning behind the fact that there is no active search- and retrieval policy in place for these children.<sup>69</sup> The State Secretary of Security and Justice answered that the number of children who disappear from the protected reception facilities is not that high and that it is often their own choice to leave these facilities and hide from government supervision.<sup>70</sup> According to the State Secretary of Security and Justice, actors do take action in case of a disappearance.<sup>71</sup> If children disappear, the police as well as the Unit for human trafficking (in Dutch: Unit Mensensmokkel, UMS) are contacted.<sup>72</sup>

63. Central Agency for the Reception of Asylum seekers (COA), 'Feiten en Cijfers', was accessible till December 2014 at: <http://www.coa.nl/nl/over-coa/feiten-en-cijfers>.

64. Central Agency for the Reception of Asylum seekers (COA), 'Locations for young people', available at: <https://www.coa.nl/en/about-us/reception-centres/locations-for-unaccompanied-minor-asylum-seekers> (accessed at: 30 April 2015).

65. Ibidem.

66. Ibidem.

67. Defence for Children and UNICEF, 'Annual report on children's rights in The Netherlands', May 2015, available at <http://www.defenceforchildren.nl/images/68/3827.pdf> (in Dutch), p. 16.

68. Ibidem.

69. *Parliamentary Papers II 2014-2015*, 19 637, no. 2025, pp. 9-10.

70. Ibidem, p. 16.

71. Ibidem.

72. Ibidem.

Furthermore, the State Secretary argues that employees of the Central Agency for the Reception of Asylum Seekers working in the reception facilities are trained to recognise signs of possible disappearances.<sup>73</sup>

### Exploitation and human trafficking

In 2014, ten children received a temporary residence permit based on chapter B8/3 of the Aliens Circular 2000,<sup>74</sup> which applies to victims and witnesses of human trafficking. In the same year, 80 separated children were placed in the protected reception facility because they had become a victim of human trafficking or because there were signals that they may become a victim.<sup>75</sup> These children stayed in this shelter for 120 days on average.<sup>76</sup>

### Detention

In 2014, ten separated children were placed in alien/border detention.<sup>77</sup> Since September 2014, border detention has been abolished in The Netherlands. However, separated children may still be placed in border detention when the government considers this necessary to ensure the availability of the minor.<sup>78</sup> Furthermore, if there are doubts about the age of a separated child, he or she may be placed in border detention during the period in which the government conducts an age assessment. Separated children who cannot identify themselves may also be placed in alien detention (however, this does not happen in practice),<sup>79</sup> as well as separated children who have committed a criminal offence.<sup>80</sup>

With regard to the placement of separated children in detention, it is also important to point at the fact that separated children may be placed in detention prior to return. Since the abolishment of border detention, a new detention facility is in use. This facility has been built in Zeist and is considered child-friendly by the government. Although the location is primarily designed for children within families, separated children who must return to their country of origin can be placed there as well.<sup>81</sup> Current practice shows that separated children with a criminal record and separated children who will be returned to the country of origin are placed at the facility in Zeist. Although the authorities call this location child-friendly, several NGOs have expressed their concerns on this so-called child-friendliness.<sup>82</sup>

In The Netherlands, separated children can be detained for a maximum of 14 days. However, a sixteen-year-old pregnant girl of Roma origin was placed in the detention facility in Zeist for a period of 50 days.<sup>83</sup> It can be argued that detention prior to return is not always used as a measure of last resort. This is not in line with article 17 of the Return Directive.<sup>84</sup>

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73. *Parliamentary Papers II* 2014-2015, 19 637, no. 2025, p. 16.

74. Defence for Children and UNICEF, 'Annual report on children's rights in The Netherlands', May 2015, available at <http://www.defenceforchildren.nl/images/68/3827.pdf> (in Dutch), p. 16.

75. *Ibidem*.

76. *Ibidem*.

77. *Ibidem*, p. 29.

78. No Child in Detention, 'Dad, have we done something wrong?', January 2014, available at: <https://www.vluchtelingenwerk.nl/sites/public/u2243/NoChildInDetention.pdf> (in English), p. 42.

79. Defence for Children and UNICEF, 'Bescherming alleenstaande minderjarige vreemdelingen in de knel: zorgpunten en aanbevelingen bij de herijking van het beleid', April 2013, available at: <http://defenceforchildren.nl/images/20/2547.pdf> (in Dutch), p. 8, and correspondence with Nidos.

80. European Migration Network, 'Policies, practices and data on unaccompanied minors in the EU Member States and Norway', Synthesis Report: May 2015, available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn\\_study\\_2014\\_uams.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn_study_2014_uams.pdf), p. 40.

81. *Parliamentary Papers II* 2013-2014, Invoering screening en nieuwe locatie voor kinderen, letter to the Parliament, 28 May 2014. Remark: in The Netherlands, the 'Dutch Coalition no Child in Detention' pledges for a full abolition of the detention of children. This Coalition is opposed to any form of detention of children on the basis of the fact that they are migrants without a residence permit or asylum seekers just arriving in The Netherlands. Although the abolishment of border detention is seen as a step in the right direction, the fact that families and children are easily placed in the detention facility in Zeist is worrying. Detention is not used as an ultimum remedium and the best interests of the child not taken into account when deciding to place them in the detention facility.

82. Website Dutch Coalition No Child in Detention: <http://www.geenkindindecel.nl/?ac=Homepage> (in Dutch).

83. Case reported at the helpdesk of Defence for Children -ECPAT The Netherlands.

84. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

### 3.2 Background to immigration and refugee procedures

Upon arriving in The Netherlands, a large majority of separated children apply for asylum. When examining the asylum application, the Immigration and Naturalisation Service also assesses the possibilities to grant a residence permit based on medical grounds,<sup>85</sup> on article 8 of the European Convention on Human Rights (hereinafter: ECHR) or on humanitarian grounds. Furthermore, the possibilities to grant a no blame permit are assessed. In this paragraph, a background to and more detailed information on immigration and refugee procedures will be given after having described an important policy change with regard to separated children: the abolishment of the special residence permit.

#### The abolishment of the special residence permit for separated children

On the 1st of June 2013, the special residence permit for separated children has been abolished. This abolishment was part of the revision of the policy for separated children. Before this policy change, separated children whose asylum claim had been rejected could be granted a residence permit if there was no adequate reception available in their country of origin.<sup>86</sup> Each year, this residence permit had to be renewed until the eighteenth birthday. As a consequence of the abolishment of the special residence permit, the number of children residing without documents in The Netherlands is likely to have increased.<sup>87</sup> For undocumented minors, it is harder to realise their fundamental rights.<sup>88</sup> Moreover, they are likely to be more vulnerable to child trafficking and exploitation.<sup>89</sup> The abolishment of the special residence permit for separated children is, according to Defence for Children - ECPAT and UNICEF The Netherlands, not in line with articles 3 (the best interests of the child), 6 (the right to development) and 20 (children deprived of their family) of the CRC.<sup>90</sup>

Although the special residence permit has been abolished, separated children without any status still have the right to education and health care. However, as set out in the fourth NGO report on children's rights in The Netherlands of the Dutch NGO Coalition for Children's Rights (hereinafter: the Coalition), the fact that separated children have to live without documents restricts their living circumstances.<sup>91</sup>

### 3.3 Background to the asylum procedure

An asylum residence permit can be granted on two different grounds, as laid down in the Dutch Aliens Act 2000:

- Refugee status: qualification as a refugee under article 1A of the 1951 Geneva Convention (A ground).
- Subsidiary protection: in the meaning of article 3 of the ECHR and article 15c of the Qualification Directive (B ground).

An asylum residence permit is valid for five years as separated children always first receive a temporary permit. After five years, there is a possibility to apply for a permanent asylum residence permit. Separated children who are between twelve and eighteen years of age can lodge an asylum application themselves.<sup>92</sup> However, both the child and the guardian have to sign the application. For separated children under twelve years of age, the guardian has to sign the asylum application form on behalf of the child.<sup>93</sup> After the asylum

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85. Article 64 Dutch Aliens Act 2000.

86. Goeman, M. and Van Os, C., 'Implementing the core standards for guardians of separated children in Europe – country assessment: The Netherlands', 2013, available at: <http://www.corestandardsforguardians.com/images/23/352.pdf>, p. 14.

87. Ibidem.

88. Ibidem.

89. The Dutch NGO Coalition for Children's Rights in The Netherlands 2008-2014: 4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights, p. 74.

90. Defence for Children and UNICEF, 'Bescherming alleenstaande minderjarige vreemdelingen in de knel: zorgpunten en aanbevelingen bij de herijking van het beleid', April 2013, available at: <http://defenceforchildren.nl/images/20/2547.pdf>, p. 8.

91. The Dutch NGO Coalition for Children's Rights, "Children's rights in The Netherlands 2008-2014: 4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights", August 2014, pp. 27-28.

92. AIDA Asylum Information Database, 'National Country Report: The Netherlands', March 2014, available at: <http://www.refworld.org/pdfid/5406c46b4.pdf>, p. 32.

93. Ibidem.

application has been signed, separated children will follow almost the same procedure as adult asylum-seekers.<sup>94</sup> One of the main differences between the asylum procedure for adults and the procedure for children can be found in the fact that separated children have a longer rest and preparation time compared to adults. The rest and preparation time for separated children is three weeks at minimum instead of eight days for adults.<sup>95</sup> Nidos, the guardianship authority, can advise the Immigration and Naturalisation Service that this rest and preparation time should be prolonged.<sup>96</sup> According to Defence for Children - ECPAT, there are question marks whether this period could really be seen as a rest and preparation time because children have many appointments. For example with the Immigration and Naturalisation Service, and the lawyer.<sup>97</sup> With regard to the asylum procedure, it is also relevant to mention that the so-called 'accelerated asylum procedure' (in Dutch: Algemene Asielprocedure, also known as 'AA') is used a lot in The Netherlands.<sup>98</sup> This accelerated procedure takes place within eight days. The children's ombudsman, and the European Parliament,<sup>99</sup> have called on the State to abolish the possibility to apply for this accelerated procedure because separated children are not in all procedural steps represented by a lawyer or a guardian.<sup>100</sup> Moreover, a lot of children have indicated that they do not understand how this procedure actually works.<sup>101</sup> The Committee on the Rights of the Child is also concerned about the accelerated procedure since this is aimed at a speedy consideration and thus placing constraints on procedural safeguards.<sup>102</sup>

During the asylum procedure, children between six and twelve years of age are heard by the Immigration and Naturalisation Service in a special unit for separated children. This unit is located near Den Bosch. According to the government, there is a child-friendly interview room equipped with a drawing table and there is a small area where children can play.<sup>103</sup> Moreover, employees of the Immigration and Naturalisation Service working in these special units are said to be trained for interviewing separated children.<sup>104</sup> However, question marks were raised by respondents to the interviews conducted for this project on the level of training these employees receive. This raises the question whether the interviews with these children can be considered to be child-friendly and whether the development and maturity level of an individual child is sufficiently taken into account.

From children's- and human rights perspective, it is remarkable that the asylum procedure for separated children is the same as the procedure for adults in the sense that child-specific information and elements are not taken into account. In Dutch asylum law and policy, only a few child-specific provisions can be found.<sup>105</sup> During the asylum procedure, the Immigration and Naturalisation Service assesses the asylum application and if it is believed that a separated child needs protection, an asylum residence permit will be granted.<sup>106</sup> In most of the cases, there is a final decision on the asylum application within one year.<sup>107</sup> If the asylum application has

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94. Immigration and Naturalisation Service, 'Unaccompanied Minor Foreign National (UMFN or AMV in Dutch)', available at: <https://ind.nl/EN/individuals/residence-wizard/asylum/#paragraph9> (accessed: 11-09-2014).

95. Immigration and Naturalisation Service, 'Unaccompanied Minor Aliens (in Dutch: Alleenstaande Minderjarige Vreemdeling (AMV)', available at: <https://ind.nl/Documents/6074.pdf>.

96. Böcker, A.G.M., Grütters, C.A.F.M. et al., 'Evaluatie van de herziene asielprocedure, eindrapport', September 2014: Wetenschappelijk Onderzoek en Documentatiecentrum (WODC), p. 83.

97. Defence for Children – ECPAT The Netherlands, 'De rol van voogden in de bescherming tegen kinderhandel en uitbuiting', GATE Project, February 2013, available at: <http://www.defenceforchildren.nl/images/69/2184.pdf> (in Dutch), p. 16.

98. Children's Ombudsman, 'Children's Rights Monitor 2014', available at: <http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/Kinderrechtenmonitor2014.pdf> (in Dutch), p. 164.

99. Ibidem.

100. Ibidem, p. 167.

101. Ibidem, p. 164.

102. Committee on the Rights of the Child 'Concluding observations on the fourth periodic report of the Netherlands', CRC/C/NDL/CO/4, 8 June 2015, para. 52.

103. Goos, J.B.A., 'De Asielprocedure', The Hague: Wolters Kluwer 2008, p. 184.

104. Interview Immigration and Naturalisation Service, February 2015.

105. Bruin, R. and Kok, S., 'Lessen uit internationale rapporten: het kind in de asielprocedure', *A&MR* 2015 (4), p. 172.

106. Goos, J.B.A., 'De Asielprocedure', The Hague: Wolters Kluwer 2008, p. 184.

107. Children's Ombudsman, 'Children's Rights Monitor 2014', available at: <http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/Kinderrechtenmonitor2014.pdf> (in Dutch), p. 66.

been rejected, there will be a possibility to object, appeal and higher appeal before court. When a residence permit is not granted, separated children must return to their country of origin. However, the so-called 'no blame permit' could be considered as an exception to this rule. The 'no blame permit' is a regular residence permit; the criteria of this permit will be described in more detail below.

### **3.4 Background to regular procedures (that is, non-asylum procedures)**

Besides the possibility to apply for asylum, separated children may apply for a regular residence permit and consequently they will find themselves in a regular procedure. As already described above, regular, non-asylum requests are not registered by the government. Before describing these different procedures in more detail below, it is relevant to mention that separated children cannot apply for asylum and a regular residence permit at the same time. According to article 30 (1) sub b of the Dutch Aliens Act 2000, an application for asylum will be denied if a person is already residing legally in The Netherlands while waiting for the Immigration and Naturalisation Service to decide upon an application for a regular residence permit. However, as already described above, if a separated child applies for asylum, the Immigration and Naturalisation Service decides not only upon the asylum application but also investigates the possibilities to grant a residence permit on article 8 ECHR, article 64 of the Dutch Aliens Act 2000, and on humanitarian grounds.

#### **Human trafficking**

Separated children who are a victim or witness of human trafficking may apply for a residence permit on temporary humanitarian grounds. A separated child who reports to the police to be a victim of human trafficking, and in case a criminal investigation against the traffickers can be started, will be granted a residence permit on temporary humanitarian grounds for the duration of the criminal investigation and prosecution.<sup>108</sup> The criteria for this residence permit for victims of human trafficking are laid down in chapter B8, paragraph 3 of the Dutch Aliens Circular 2000. In case a temporary residence permit has expired or has been withdrawn, and when there are special, individual circumstances because of which the Minister of Security and Justice considers the case to be harrowing, a residence permit on non-temporary humanitarian grounds will be granted to a separated child. This permit will also be granted in case there has been a conviction, or in case the authorities have continued to trace the traffickers for a period of three years. The criteria for the residence permit on non-temporary humanitarian grounds are set out in chapter B9/9 of the Dutch Aliens Circular 2000.

Defence for Children - ECPAT and UNICEF The Netherlands have criticised the trafficking procedure because only separated children who collaborate in the criminal investigation are eligible to apply for this residence permit, and for many children the threshold to collaborate in a procedure against human traffickers is too high.<sup>109</sup> A child should only cooperate with the police when this is in the best interests of the child and cooperation with the police should not be set as a prerequisite for a residence permit.<sup>110</sup> Furthermore, the procedure for victims of human trafficking is not designed for separated children but for adults.<sup>111</sup>

#### **No blame permit**

In The Netherlands, there is a forced return policy. If a separated child has not been granted a residence permit, he or she must return to the country of origin. In case a separated child was younger than fifteen at the time when the initial request for a residence permit was filed, a 'no blame permit' will be granted if it becomes clear that the child cannot be blamed for the fact that he or she cannot return to the country of origin.

It is important to point at the fact that the conditions for this 'no blame permit' are very strict.<sup>112</sup> A person may, for example, not have reached the age of eighteen. Furthermore, the conditions of the 'no blame permit' for separated children will not apply to separated children who were older than 15 when arriving in The Netherlands.

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108. Immigration and Naturalisation Service, 'Residency regulation human trafficking', available at: <https://ind.nl/EN/organisatie/themes/human-trafficking/residency-regulation-human-trafficking/Pages/default.aspx>, (accessed at: 11 July 2014).

109. Defence for Children-ECPAT and UNICEF, 'Beter beschermd in de B8/3: een duurzame oplossing voor minderjarige buitenlandse slachtoffers mensenhandel', October 2013, available at: <http://www.defenceforchildren.nl/images/13/2858.pdf>.

110. Ibidem.

111. Ibidem.

112. Goeman, M. en Van Os, C., 'Implementing the core standards for guardians of separated children in Europe – country assessment: The Netherlands', 2013, available at: <http://www.corestandardsforguardians.com/images/23/352.pdf>, p. 14.

For this group, the conditions of the ‘no blame permit’ for adult migrants are applicable.<sup>113</sup> By drawing this line at the age of 15, separated children residing in The Netherlands are treated differently. This difference in treatment based on age is not in line with several non-discrimination provisions as laid down in, for example, article 2 CRC and article 14 ECHR. In light of the above-mentioned, it can also be argued that the ‘no blame permit’ cannot be considered to be a solution for a lot of vulnerable separated children.

### Children’s pardon

In 2013, there was a possibility to apply for a residence permit under the temporary ruling of the children’s pardon. Under this temporary ruling a residence permit was only granted to a separated child who:

- Had applied for asylum at least five years before reaching the age of eighteen and has resided at least five years in The Netherlands since then;
- Was younger than 21 at the moment the request was filed;
- Had not left the European Union or The Netherlands;
- Had not evaded the supervision of the central government (the Immigration and Naturalisation Service, the Repatriation and Departure Service and/or the Central Agency for the Reception of Asylum Seekers) or Nidos, when placed under guardianship.<sup>114</sup>

The residence permit was not granted if a separated child:

- Was considered a danger to the public order or the public security;
- Was a citizen of the EU or EEA;
- Was unable to prove his/her identity;
- Had left the European Union;
- Already held a residence permit.<sup>115</sup>

Many children and their families were granted a residence permit based on the temporary ruling of the children’s pardon. However, hundreds of children still do not meet the strict criteria for a variety of reasons. Defence for Children - ECPAT expressed criticism on this policy and the way it is applied because this is not in line with the CRC. The eligibility conditions set out for the children’s pardon have also been criticized by the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks.<sup>116</sup> In particular, the condition that the children must have been under supervision of the national government at all times was deemed too restrictive because a lot of children integrated in municipalities and did not hide from the authorities.<sup>117</sup>

### Final ruling of the children’s pardon

Besides the temporary ruling, a final ruling of the children’s pardon has entered into force. The criteria of this final ruling are even stricter than the criteria of the temporary ruling as described above. For example, if they were not granted a residence permit, children should have collaborated on their return. It is unclear how applicants for this permit can prove that they have worked on their return but that they, at the same time, were not able to return to their country of origin. In 2014, 520 children applied for the final ruling of the children’s pardon.<sup>118</sup> Only ten of them have been granted a residence permit.<sup>119</sup> Because of the strict criteria and the five-year

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113. *Parliamentary Papers II 2011-2012*, 27062, no. 75, p. 6.

114. Besluit van de Staatssecretaris van Veiligheid en Justitie van 30 januari 2013, nummer WBV 2013/1, houdende wijziging van de Vreemdelingencirculaire 2000, available at: <https://www.rijksoverheid.nl/documenten/brieven/2013/02/01/besluit-van-de-staatssecretaris-van-veiligheid-en-justitie-wbv-2013-1-houdende-wijziging-van-de-vreemdelingencirculaire-2000> (in Dutch).

115. *Ibidem*.

116. Council of Europe Commissioner for Human Rights, ‘Report by Nil Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to The Netherlands, from 20 to 22 May 2014’, CommDH(2014)18, 14 October 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2244481&Site=COE>.

117. *Ibidem*.

118. Defence for Children – ECPAT The Netherlands and UNICEF The Netherlands, ‘Jaarbericht Kinderrechten 2015’ (Annual report on children’s rights in The Netherlands), May 2015, available at: <https://www.defenceforchildren.nl/images/68/3827.pdf>, p. 31.

119. *Ibidem*.

term, separated children will, in practice, have to apply for the 'no blame permit' instead of for the final ruling of the children's pardon. Considering the above-mentioned, it is not relevant to describe the criteria of the temporary ruling of the children's pardon in further detail for the purposes of this research.

### **Residence permit for compelling reasons / on humanitarian grounds**

This residence permit may be granted when the minor has a harrowing case. The State Secretary of Security and Justice can grant this residence permit by using his discretionary power.

### **Residence permit on medical grounds**

A residence permit may be granted on medical grounds. Furthermore, a temporary residence permit may be granted when a separated child is not able to return to the country of origin for medical reasons. The legal basis for this residence permit can be found in article 64 of the Dutch Aliens Act 2000. This temporary residence permit is a waiver of the obligation to leave The Netherlands.

## **3.5 Background to care arrangements**

In The Netherlands, all separated children are placed under guardianship.<sup>120</sup> Guardianship is based on the Dutch Civil Code and rests, for the majority of separated children residing in The Netherlands, with the guardianship authority: Nidos.<sup>121</sup> Separated children with a nationality of a Member State of the European Union can be placed under guardianship of Youth Care or the Salvation Army. Because of the fact that the majority of the separated children are placed under guardianship of Nidos, this paragraph will only focus on the care arrangement for separated children placed under Nidos guardianship. In 2014, 1,418 separated children were placed under guardianship of Nidos.<sup>122</sup> Nidos is financed by the State. In the execution of its tasks this organisation is said to be independent; despite the fact they are financed with money from the Ministry of Security and Justice, their board is independent.

Upon arriving in The Netherlands, all separated children have to go directly to the application centre in Ter Apel (located in the north of The Netherlands). They arrive in Ter Apel in different ways:

- On their own;
- Dropped by family members;
- Dropped from cars or trucks by persons they do not know;
- Arrested at border control (for example when their tickets are checked in the train or at the airport);
- Found by the police when working in forced prostitution.

When separated children are staying at the application centre, an intake interview is conducted by Nidos in order to receive more information about the minor, and his/her family and history. The aim of this interview is threefold: collecting information to file a request for (temporary) guardianship, collecting information to assess in what kind of reception facility a child should be placed and assessing whether the child is a (potential) victim of human trafficking.

After the intake interview, a guardian will be appointed by a court to children who apply for a residence permit, and who are assumed to have a lack of temporary (parental) care.<sup>123</sup> Guardianship ends by law when the minor reaches the age of eighteen.<sup>124</sup> In other cases, a request to the magistrate of a juvenile court has

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120. Defence for Children – ECPAT The Netherlands, 'Closing a protection gap: national report', December 2010, available at: <http://www.corestandardsforguardians.com/images/11/292.pdf>, p. 12.

121. Not all separated children are placed under guardianship of Nidos, the Court may also appoint a guardian from the Child Protection Board.

122. De Ruijter de Wildt (Nidos) and others, 'Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States', February 2015, p. 68.

123. Goeman, M. and Van Os, C. (Defence for Children – ECPAT The Netherlands), 'Closing a Protection Gap', national report, December 2010, available at: <http://www.corestandardsforguardians.com/images/11/292.pdf>, p. 12.

124. Goeman, M., Fournier, K. and Arnolds, S., 'A comparative analysis of systems of guardianship', *European Journal of Migration and Law* 16 (2014), p. 501.



to be filed in order to end guardianship. The magistrate of a juvenile court has to confirm the handing over of guardianship.<sup>125</sup> These cases are those in which:

- 1) The parental custody should be restored;
- 2) Guardianship should be transferred to family members;
- 3) Guardianship should be transferred to another organisation in The Netherlands (for example from Nidos to Youth Care) or to the foster parents;
- 4) A child will be returned to the country of origin or to another country;
- 5) It has become clear that a child is not a minor but an adult.

When guardianship of a child cannot be ended by a juvenile court, it may occur that a separated child returns to the country of origin while he or she is formally still under Nidos guardianship.

After having spent some time (Nidos aims at a maximum of one day) in the application centre in Ter Apel, separated children will be transferred to one of the Process Reception Locations, located near Den Bosch, Wageningen and Utrecht or, if they are seen as vulnerable, to a foster family or to a protected reception facility. Separated children who go to a Process Reception Location will stay there for a maximum of three months. While a child is staying in this location, a first decision on the application for a residence permit will be made by the immigration authorities. Then, after having stayed for a maximum of three months at the Process Reception Location, separated children who received a negative first decision are placed in a large-scale reception facility (also called 'campus'), a small living unit, or in a foster family of Nidos. Children who are granted a residence permit are, depending on their development, going to a foster family or to a so-called 'assisted living' facility.

According to the Inspectorate for Youth Care, more attention should be paid to the emotional safety of children residing in the Process Reception Facilities.<sup>126</sup> Furthermore, Defence for Children-ECPAT, UNICEF The Netherlands and the Dutch Refugee Council state that there is also a lack of physical safety for children residing at these reception locations.<sup>127</sup> The reason for this statement can be found in the fact that, according to guardians and mentors working in these facilities, many children disappear from these locations leaving them at more risk to become a victim of trafficking and exploitation.<sup>128</sup>

In The Netherlands, the reception facilities mentioned above, that is the Process Reception Facility, the campus, and the small living unit are under the responsibility of the Central Agency for the Reception of Asylum Seekers. However, the Central Agency for the Reception of Asylum Seekers outsources this responsibility to other child care organisations such as the JADE Foundation and XONAR.<sup>129</sup> When separated children are placed in one of the reception locations under the responsibility of the Central Agency for the Reception of Asylum Seekers, Nidos guardians have to work in these facilities although they do not always agree with the circumstances in which the children have to live.<sup>130</sup> In case guardians consider this kind of reception to be not in the best interests of the child, they can look for a different form of reception, for example, placement in a foster family. Nidos

125. Nidos, 'Statement on the best interests of the child in the asylum procedure', April 2014.

126. Inspectie Jeugdzorg, 'Grootschalige opvang van Alleenstaande Minderjarige Vreemdelingen', Utrecht: November 2012, available at: <http://www.inspectiejeugdzorg.nl/documenten/Onderzoek%20naar%20%20Grootschalige%20Opvang%20AMVs%20op%20de%20proceslocaties.pdf>. See also: Ministry of Interior and Kingdom Relations, letter to the parliament on the report of the Inspectorate for Youth Care, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2012/05/21/kamerbrief-over-rapport-inspectie-jeugdzorg-over-opvang-amv-s-in-campuslocaties>.

127. UNICEF, Defence for Children and Dutch Refugee Council, 'Reactie op rapport Inspectie Jeugdzorg over procesopvanglocaties', letter to the Members of the Parliament, March 2013, available at: <http://www.defenceforchildren.nl/images/69/2189.pdf> (in Dutch).

128. Ibidem. See also: Guardians Against Child Trafficking and Exploitation (GATE), national report The Netherlands, October 2012, available at: [http://www.gate-eu.org/files/DC\\_GATE\\_EXTENDED\\_20121116\\_CS5.pdf](http://www.gate-eu.org/files/DC_GATE_EXTENDED_20121116_CS5.pdf).

129. For more information about these organisations see: <http://www.jadezorggroep.nl/> (in Dutch) and <http://www.xonar.nl/amv/> (in Dutch).

130. For example, Nidos criticises the large-scale reception facilities. Interview Nidos, September 2014.

discusses the possible replacement with the Central Agency for the Reception of Asylum Seekers.

### **Placement in (foster) families**

When a separated child will be placed in a foster family, Nidos tries to find a family with a culture similar to the child's culture.<sup>131</sup> Furthermore, when family members who are already residing in The Netherlands can be found, a child will be placed there. Of all separated children residing in The Netherlands, around 47% live in foster families.<sup>132</sup> By placing separated children in a family with, or close to, their own ethnic background, Nidos aims to provide them with a secure basis from which they can return to their country of origin or integrate in Dutch society while preserving their own cultural identity.<sup>133</sup>

In the new Youth Act, which entered into force on the 1st of January 2015, the issue of continuity with regard to the child's development, and attachment to (foster) parents/caregivers plays an important role. Continuity also concerns durability because there should be a certain durability regarding the circumstances in which a child is growing up. When there is no continuity, the development of children can easily be harmed. The fact that continuity plays an important role in the new Youth Act stems from criticism on the Dutch youth care system in which children were too easily transferred from one foster family to another.<sup>134</sup> In the revised act on child protection measures, it is stated that the decision to transfer children to another foster family has to be carefully justified. Moreover, there is a possibility to have this decision examined by a juvenile court.<sup>135</sup> This provision is also applicable to separated children and therefore Nidos, the guardianship authority, should carefully justify a decision to transfer children from one foster family to another.

When separated children reach the age of eighteen, their foster families no longer receive a financial contribution for them from the Dutch government. This is considered to be a weakness in the Dutch system, and highlights the conflict between migration- and youth law as children with the Dutch nationality are allowed to stay in foster care until they reach the age of twenty-one.<sup>136</sup>

### **New reception facility as of January 2016**

Separated children may be placed in a campus, a large-scale reception facility. From 2016 onwards, these large-scale reception facilities will be abolished.<sup>137</sup> Children under fifteen years of age will then be placed into foster families while children over fifteen years will be placed in smaller-scale facilities with a capacity of sixteen to twenty beds. Although these criteria will in most of the cases be strictly applied, there is a possibility to place a child who has already reached the age of fifteen in a foster family when Nidos considers this to be in the best interests of the child.<sup>138</sup>

As of January 2016, Nidos will be responsible for separated children under fifteen years of age living in foster families and for separated children who have been granted a residence permit.<sup>139</sup> In the meantime, the Central Agency for the Reception of Asylum Seekers will be responsible for the reception of separated children between fifteen and eighteen years of age who are not in the possession of a residence permit.<sup>140</sup>

Although the abolishment of the large-scale reception facilities, that is, the campuses, can be considered as a step in the right direction, concerns remain. One of the major points of concern is the fact that only separated children who were not granted a residence permit will be placed in the new reception facilities. This

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131. De Ruijter de Wildt (Nidos) and others, 'Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States', February 2015, p. 70.

132. Ibidem.

133. Ibidem.

134. Interview Nidos, September 2014.

135. This is only the case for children who resided for the duration of one year in a foster family. See: <https://zoek.officielebekendmakingen.nl/stb-2014-130.html> (article 1:265i BW).

136. De Ruijter de Wildt (Nidos) and others, 'Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States', February 2015, p. 72.

137. *Parliamentary Papers II* 2012-2013, 19 637, nrs. 1635 en nr. 1641.

138. Conversation with Nidos.

139. De Ruijter de Wildt (Nidos) and others, 'Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States', February 2015, p. 69.

140. Ibidem.

is likely to cause a depressing ambiance as a good future prospect is lacking. UNICEF - The Netherlands and Defence for Children-ECPAT have expressed their hope that sufficient attention will be paid to the individual and emotional development of children residing in the new reception facilities.<sup>141</sup>

Another point of concern can be found in the fact that, as already mentioned above, most children over fifteen years of age will still not be placed in foster families. Although these children will be under 24/7 supervision by reception facility staff, it has to be underlined that this is not the same as the support a foster family is able to offer. Thereby, it is striking that according to the new Youth Act, placement in a foster family always should have preference over placement in a facility.<sup>142</sup> The fact that separated children between fifteen and eighteen years of age are not automatically placed in foster families is not in line with this act, and with articles 2 (non-discrimination), 3 (the best interests of the child) and 20 (children deprived of their family) of the CRC.

It is also remarkable that separated children who are over 17.5 years of age at the time of arrival will be accommodated with adults in regular reception facilities. Although the Reception Directive allows for this,<sup>143</sup> the CRC clearly states that anyone younger than eighteen years old should be considered a child and therefore, when looking at the CRC, this distinction should not be made.

Besides the above-mentioned points of concern it is important to note that, when reaching the age of eighteen, minors are no longer allowed to stay in the reception facilities described above. They are likely to disappear because they run the risk of being detained or because they feel there is no future perspective anymore. Furthermore, these (former) separated children are more likely to get into contact with persons who will not always have good intentions, for example human traffickers.

### **Small living unit (KWE) and children's community (KWG)**

As already described in paragraph 3.2, approximately four separated children between fifteen and eighteen years of age who are able, with some help, to care for themselves may be placed together in a small living unit.<sup>144</sup> Separated children who are granted a residence permit will be placed in the small living unit or in a so-called children's community. In the children's community, approximately ten children can be placed.

### **Protected reception facility**

Separated children who are victims of human trafficking or are at risk to become trafficked, are placed in protected reception facilities (also referred to as 'Safe Houses' by Nidos). In this form of reception, the JADE foundation, the Central Agency for the Reception of Asylum Seekers and Nidos are working together. According to the Research and Documentation Centre of the Ministry of Security and Justice, separated children are deprived of their liberty when staying in the protected reception facility because they are placed in special closed settings.<sup>145</sup> However, it is important to point at the fact that the above-mentioned report of the Documentation Centre of the Ministry of Security and Justice is already five years old and therefore possibly no longer represents current practice. In 2016, a new report from the Inspection Youth Care and the Inspection for the Ministry of Security and Justice on the Protected Reception Facilities is expected.

Guardians and mentors have indicated during a research conducted for the GATE project that the closed setting is adapted to the background of children residing in the protected reception facility.<sup>146</sup> For example, for (potential) victims from Guinea, a more custodial setting was not perceived as required for their protection as it had

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141. Defence for Children and UNICEF, 'Annual report on children's rights in The Netherlands', May 2015, available at <http://www.defenceforchildren.nl/images/68/3827.pdf> (in Dutch), p. 32.

142. *Parliamentary Papers II* 2012/13, 33684, no. 3, para. 7.7.

143. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

144. Inspectie Jeugdzorg, 'Grootschalige opvang van Alleenstaande Minderjarige Vreemdelingen', 2012, available at: <http://www.inspectiejeugdzorg.nl/documenten/Onderzoek%20naar%20Grootschalige%20Opvang%20AMVs%20op%20de%20proceslocaties.pdf>, p. 5

145. Kromhout, M.H.C. et al., 'Tussen beheersing en begeleiding: een evaluatie van de pilot 'beschermd opvang risico-AMV's', The Hague: WODC 2010, available at: <http://www.wodc.nl/onderzoeksdatabase/evaluatie-pilot-beschermd-opvang-alleenstaande-minderjarige-vreemdelingen.aspx> (in Dutch).

146. Guardians Against Child Trafficking and Exploitation (GATE), national report The Netherlands, October 2012, available at: [http://www.gate-eu.org/files/DC\\_GATE\\_EXTENDED\\_20121116\\_CS5.pdf](http://www.gate-eu.org/files/DC_GATE_EXTENDED_20121116_CS5.pdf), p. 45.

been the case for (potential) victims from Nigeria.<sup>147</sup>

Moreover, Nidos is of the opinion that separated children are not deprived of their liberty when residing in the protected reception facility. Nidos justifies this statement by pointing at the fact that a certain number of children has disappeared from the facility.<sup>148</sup> Furthermore, Nidos argues that the supervision period, during which it could be argued that there is a deprivation of liberty, has been shortened.<sup>149</sup> After this supervision period, children can leave the facility whenever they want but they always have to be accompanied. However, no one can enter the facility from outside.<sup>150</sup>

In their fourth NGO report on children's rights in The Netherlands to the UN Committee on the Rights of the Child, the Coalition on Children's Rights points at the fact that there is a lack of access to court and legal assistance for separated children staying in the protected reception facilities.<sup>151</sup> Furthermore, the decision whether a child should be placed in the protected reception is made by the Nidos guardians, together with the Alien's Police and the Immigration and Naturalisation Service.<sup>152</sup> During an intake interview, taking place shortly after the minor has arrived in the application centre in Ter Apel, Nidos guardians assess whether a separated child is a (potential) victim of human trafficking. This assessment is done by using a checklist with indicators of human trafficking or exploitation. When Nidos has clear indications that a separated child is or risks becoming a victim, they inquire with the Alien's Police and the Immigration and Naturalisation Service in order to investigate whether they see these risks as well and whether they have more indications. Once a child has been placed in the protected reception facility, there is a feedback loop system in place. Every month, the child's mentor at the protected reception facility informs the Nidos guardians whether the initial indication as (potential) victim of human trafficking has been correct.<sup>153</sup>

In the light of the above-mentioned, it is important to point at the fact that the decision to place a separated child in the protected reception facility is not subjected to any judicial review. For this reason, it can be stated that the protected reception facility, if it can be classified as a restriction of freedom of movement, functions without a clear legal basis. Thereby, it can be argued that, in principle, the existence of a protected reception facility can be considered a good development. Concerns remain about the lack of directives and judicial review taking place before separated children are placed in the protected reception facility and during their stay in these facilities. It is, for example, not clear whether there is a clear set of internal house rules or whether there is an internal complaint mechanism.

### Reaching the age of eighteen

After having reached the age of eighteen, former separated children have to leave the protected reception facility. Since this practice has been criticised because many young people still need guidance and protection after, a pilot project involving Nidos and the Central Agency for the Reception of Asylum Seekers has been initiated by the government in 2015. In this pilot project, former separated children are placed in a 'normal' reception centre but still receive guidance from their former guardian.<sup>154</sup> During this project, the government investigates whether the Nidos guardian can stay a mentor/coach for these young people.<sup>155</sup> This initiative can be seen as a

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147. Guardians Against Child Trafficking and Exploitation (GATE), national report The Netherlands, October 2012, available at: [http://www.gate-eu.org/files/DC\\_GATE\\_EXTENDED\\_20121116\\_CS5.pdf](http://www.gate-eu.org/files/DC_GATE_EXTENDED_20121116_CS5.pdf), p. 45.

148. Correspondence with Nidos.

149. Ibidem.

150. Ibidem.

151. The Dutch NGO Coalition for Children's Rights, 'Children's rights in The Netherlands 2008-2014: 4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights', August 2014.

152. Correspondence with Nidos

153. Ibidem.

154. *Parliamentary Papers II 2013-2014*, Verslag van een Algemeen Overleg, 19637, no. 1956, available at: <https://zoek.officielebekendmakingen.nl/kst-19637-1956.html>, pp. 29-30.

155. Ibidem.

good practice with regard to the determination of durable solutions for separated children in The Netherlands.

### **Concluding remarks: initial deficiencies relevant to durable solutions**

Some initial deficiencies relevant to determining durable solutions for separated children residing in The Netherlands can be derived from this chapter. The first deficiency can be found in the fact that the special residence permit for separated children has been abolished. Because of this, children who have not been granted a residence permit and who have not been returned to the country of origin live without documents in The Netherlands. As it has been described above, this does not only have a negative impact on the lives of these children but also does not respect their fundamental rights.

Another deficiency relevant to durable solutions is the fact that a residence permit can only be granted to child victims of human trafficking if there is a conviction, or in case the authorities have continued to trace the traffickers for a period of three years. If a trafficker cannot be found and/or in case there is no conviction, a residence permit will not be granted to a separated child. This undermines the durable solution process. Moreover, the fact that the Dutch government does not determine durable solutions for separated children who claim to be victim of human trafficking, is not in line with article 16 (2) of Directive 2011/36/EU on preventing and combating trafficking in human beings, explicitly stating that: *“Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.”*

Furthermore, it is striking that in Dutch asylum law and policy there are almost no specific provisions on children.<sup>156</sup> It seems that children are seen as ‘mini adults’ on which the normal asylum- or regular procedures and policy are applicable.<sup>157</sup>

In the Dutch system, the fact that foster families no longer receive any financial contribution for separated children under their care and the fact that these minors have to leave the reception facilities in which they reside as soon as they turn eighteen and receive a negative decision upon their application for a residence permit,<sup>158</sup> can be considered a deficiency relevant to durable solutions as well. This can be underpinned by stating that it is not in the best interests of these minors, and not in line with article 20 CRC that the continuity in their development is broken. Moreover, it shows a difference in treatment between children with the Dutch nationality and children with a nationality of a third country since children with the Dutch nationality may stay in foster families until the age of 21.<sup>159</sup> This is not in line with article 2 CRC and other non-discrimination provisions.

One of the most remarkable deficiencies relevant for the determination of durable solutions for separated children in The Netherlands deriving from this chapter is related to the very definition of the term ‘separated child’. As it has been described above, the term ‘separated child’ is neither used by the Dutch government, nor laid down in policy or law. The government distinguishes between unaccompanied minor aliens and children with a nationality of an EU Member State and because of this, the way in which durable solutions are determined differs. Different rules and procedures are applicable depending on the nationality of a separated child, causing also a difference in the level of protection separated children receive: there are less guarantees for separated children with a third country nationality. This will be explained in more detail in chapter 4.

### **Recommendations:**

- Let separated children stay in foster families and other reception facilities when they have turned eighteen, and no durable solution has been implemented. Provide financial compensation to foster families after a minor has reached the age of eighteen.
- Register the applications for regular residence permits of separated children.
- Provide separated children who are not granted a residence permit with a document so that they

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156. Bruin, R. and Kok, S., ‘Lessen uit internationale rapporten: het kind in de asielprocedure’, *A&MR* 2015 (4), p. 172.

157. *Ibidem*.

158. See also: De Ruijter de Wildt (Nidos) and others, ‘Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States’, February 2015, p. 72.

159. De Ruijter de Wildt (Nidos) and others, ‘Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States’, February 2015, p. 72.

are able to identify themselves. The card can clearly state that the children do not have a residence permit in The Netherlands but that they do have rights whilst they reside in the country. This way, their rights and social lives will be better protected.

- Make sure that the new reception facility that will be opened in 2016 for separated children who need to return to their country of origin will not be a 'mini campus' but a clear improvement in relation to atmosphere, and physical and emotional safety.
- Develop a legal framework and guidelines for placement of (potential) victims of trafficking in a protected reception facility, and develop a complain mechanism for separated children residing in the protected reception facilities.
- Guarantee procedural safeguards for children disappearing from care facilities.
- Abolish the distinction in policy and law between separated children with and without a nationality of a Member State of the European Union when it comes to the determination of durable solutions in the best interests of the child.
- Create a residence procedure especially designed for separated children who are victims of trafficking taking their best interests into account.
- Evaluate the revision of the policy for separated children.

#### 4. Durable solutions in The Netherlands

In this chapter, the situation with regard to durable solutions for separated children already residing in The Netherlands will be described. Therefore, government initiatives like providing humanitarian aid to developing countries and starting up projects in countries such as Afghanistan in order to prevent separated children migrating without documents to Europe,<sup>160</sup> will not be taken into account.<sup>161</sup>

##### Defining the term ‘durable solutions’

Although the term ‘durable solution’ itself is not clearly defined in The Netherlands, stakeholders and service providers agree that a durable solution is a long-term solution taking into account the best interests of the child. According to one of the respondents, a durable solution is the right to have continuity in development. The existence of a good development perspective is considered an essential element in the durable solutions process. Furthermore, it has been argued that the definition of the term ‘durable solution’ depends on the economic, political and social circumstances in a particular place and on whether a person has the strength to make the best out of a given situation.

A three options model was used when starting out with the one-to-one interviews with stakeholders and service providers. This three options model assumes that there are three umbrella categories under which durable solutions may operate. However, this model has been criticised by stakeholders and service providers during the interviews. Although, in general, stakeholders and service providers agree with the existence of these three umbrella categories under which examples of durable solutions may fall, that is, return to the country of origin, return to a third country or stay in the country of arrival, it has been mentioned that thinking in these categories might only be in the interest of the State. When thinking in umbrella categories, we may forget about the child. Therefore, when looking for durable solutions, the best interests of the child has to be determined without looking at these three general spaces because they are only a result. Moreover, with regard to the three umbrella categories, it is important to point at the fact that a large group of separated children does not even fall in any of these categories. For example, separated children who are not granted a residence permit are not always actively expelled by the authorities, and are residing without documents in The Netherlands.

Furthermore, there are some doubts among stakeholders and service providers whether the term ‘durable solution’ is suitable. The term ‘durable situation’ might be better when referring to the determination of what kind of solution is in the best interests of the child. Determining durable solutions is a process and durable solutions are liable to change. Therefore, and because of the above-mentioned, this national report will focus on the durable solution process during which a durable situation for a separated child will be determined, thereby taking the best interests of the child into account.

After having described some policy initiatives and developments influencing durable solutions in The Netherlands, the three umbrella categories will be discussed in the paragraphs below. In light of the foregoing, a holistic approach will be taken when describing the different options for durable solutions falling into one of the three general spaces where durable solutions may operate.

##### Policy initiatives and legal and political developments with regard to durable solutions

The terms ‘durable solution’ and ‘durable solution process’ are rarely used in parliamentary papers. However, the State Secretary of Security and Justice stated in a reaction on a report published by Defence for Children - ECPAT and UNICEF The Netherlands about child trafficking: *“I pursue durable solutions for unaccompanied minors to be found as soon as possible. In this respect, the guardian plays an important role.”*<sup>162</sup> In other letters that have been sent to the House of Representatives, the terms ‘durable perspective on the future’<sup>163</sup>

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160. *Parliamentary Papers II 2012-2013*, 27062, no. 88.

161. Some stakeholders and service providers argued that these kinds of policy initiatives could be considered to be a sign that the Dutch government is looking for durable solutions.

162. Letter of the State Secretary of Security and Justice to the House of Representatives, 20 December 2013, only available in Dutch at: <http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjg88tvvfwx>.

163. Letter of the State Secretary of Security and Justice to the House of Representatives about the revision of the policy for separated children, 22 June 2012, available at: <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vj0oe9angiwq#p2>.

and ‘proper solution’<sup>164</sup> are used when, in fact, referring to durable solutions for separated children. Besides these comments concerning the use of the term ‘durable solutions’, it is relevant to pay attention to an important legal and policy development in The Netherlands that took place in 2012. In this year, the Act on child protection measures, also applicable to separated children, was revised. A provision has been included stating that decisions should be taken within an acceptable period of time in order to reduce the time children have to live in uncertainty about their future. An acceptable period of time is one in which children can live in uncertainty without their development being severely hampered.<sup>165</sup> The younger the child, the shorter the acceptable period of time. As mentioned above, the State Secretary of Security and Justice has also indicated that he pursues a timely identification of a durable solution.<sup>166</sup> In the revised Act on child protection measures, the importance of durability and stability is underlined. The Child Protection Board has indicated that the content of this provision may raise a dilemma for Nidos because the way in which Nidos is able to create durability and stability depends on the decision of the Immigration and Naturalisation Service. With regard to separated children, durability and stability are seen as rare, and uncertainty about the future of a child is always present.<sup>167</sup>

With regard to policy initiatives and developments that took place in the past years relating to durable solutions, some stakeholders and service providers have argued that the government is, on the national policy level, searching for durable solutions for separated children. According to several respondents, this can be illustrated by the fact that the policy regarding separated children has been revised. As already described in paragraph 3.2, the abolishment of the special residence permit for separated children has been part of this revision. In the new policy, separated children are, whenever this is possible, returned as soon as possible to their parents in the country of origin. The fact that separated children are not given ‘false hope’ by granting them a temporary residence permit could, according to some stakeholders and service providers, be considered a step in the right direction with regard to establishing a durable solutions process. They are of the opinion that the special residence permit for separated children could not be considered durable because after having reached the age of eighteen, the former separated child had to return to the country of origin. On the contrary, there are also question marks whether the abolishment of the special residence permit could indeed be considered a step in the right direction with regard to establishing a durable solution process because there are now more separated children residing without documents in The Netherlands. Some stakeholders and service providers indicate that separated children between fifteen and eighteen years old are in most cases not forcefully returned if they have not been granted a residence permit. The government leaves them on their own and they integrate into society before they are forcefully returned when reaching the age of eighteen. Other respondents have indicated that the employees of the Repatriation and Departure Service talk on a regular basis, that is, once a month, with these minors. However, the fact remains that these children still reside without documents in The Netherlands and are not forcefully returned in practice until they reach the age of eighteen.

Besides the abolishment of the special residence permit, the children’s pardon can be considered as a good example of a policy initiative providing a durable solution for those separated children meeting the criteria. However, as already described in paragraph 3.4, there is still no solution for a large group of children, including (former) separated children, who fall outside the children’s pardon criteria.

Another important policy initiative can be found in an experiment that started in 2009 called ‘Perspective’.

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164. Letter of the State Secretary of Security and Justice to the House of Representatives about the revision of the policy for separated children, 22 June 2012, available at: <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vj0oe9angiwq#p2>.

165. *Parliamentary Papers II* 2008-2009, 32015 no. 3, Memorie van toelichting bij het wetsvoorstel tot wijziging van Boek 1 van het Burgerlijk Wetboek, het Wetboek van Burgerlijke Rechtsvordering, de Wet op de jeugdzorg en de Pleegkinderenwet in verband met herziening van de maatregelen van kindbescherming, para. 5.2.

166. Letter of the State Secretary of Security and Justice to the House of Representatives, 20 December 2013, only available in Dutch at: <http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjg88tvvfwx>.

167. Child Protection Board, ‘Weging van de aanvaardbare termijn: hulpmiddel’, 3 september 2012, p. 2.



During this experiment, twenty municipalities and the Association of Netherlands Municipalities (in Dutch: Vereniging van Nederlandse Gemeenten, also known as 'VNG') worked together in order to prevent former separated children from living without documents in The Netherlands.<sup>168</sup> They examined whether there were any new possibilities for these young people to receive a residence permit and, when a residence permit could not be granted, they investigated the possibilities in the country of origin.<sup>169</sup> The experiment ended in 2011.<sup>170</sup> It could be argued that this so-called 'Perspective approach' was aiming to find a durable solution for former separated children. However, the experiment has ended because the results were, according to the government, disappointing.<sup>171</sup> There were not enough returns.<sup>172</sup> Instead of continuing the 'Perspective approach', the government decided to revise the policy regarding separated children. This revision, of which the abolishment of the special residence permit has been a part, has been described in chapter 3.

#### 4.1 Integration in the country of arrival

Integration in The Netherlands may be considered one of the umbrella categories under which durable solutions may fall. With regard to the qualification of integration in the country of arrival as a durable solution, it is important to mention that a residence permit does not necessarily has to be considered a durable solution. This depends on the fact whether, and how, the best interests of the child were taken into account, and whether a durable solution was sought by the (immigration) authorities.

Separated children residing in The Netherlands after a residence permit has been granted indicate that they often feel alone. In many cases it is a long process before separated children receive their residence permit and once their goal has been reached, a lot of children do not know what to do. It has been mentioned by respondents that separated children often fall in a 'hole'; they miss their family and they are homesick.

#### No integration policy

From a durable solutions perspective, it is striking that there is no integration policy in place for separated children who have been granted a residence permit. This is especially remarkable since separated children from Syria and Eritrea will, because of the situation in their country of origin, in most cases be granted a residence permit. Despite the fact that integration in Dutch society for this group, and other groups of children, is considered important by the government, there is no integration policy in place.

One of the reasons for the lack of integration policies may be found in the fact that, as stated in a report published by UNICEF, the Dutch government promotes the return of separated children to their country of origin.<sup>173</sup> This can be illustrated by the fact that national policies place emphasis on providing incentives for voluntary return by not developing integration policies.<sup>174</sup> Furthermore, actors involved in the durable solutions process do not have an integration vision on paper either. For example, Nidos has published a vision on return, which will be described in more detail below, but there is no vision on integration.

However, a step in the right direction with regard to the integration of separated children can be found in the fact that the government has decided that, as from January 2016, separated children who have been granted a residence permit may stay in the municipality where they resided during their procedure.<sup>175</sup> Because of this,

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168. Grund, J.-P.C., Breeksema, J.J. et al., 'Experiment Perspectief Aanpak Voormalig Alleenstaande Minderjarige Vreemdelingen: Analyse van de Resultaten', Utrecht: June 2011, CVO Research and Consultancy, p. xi.

169. Ibidem.

170. Ibidem.

171. VNG, 'Geen Rijksgeld meer voor uitgeprocedeerde AMA's', 19 september 2011, available at: <http://www.vngmagazine.nl/nieuws/3323/geen-rijksgeld-meer-voor-uitgeprocedeerde-ama%E2%80%99s> (accessed at: 23 December 2014).

172. Defence for Children – ECPAT The Netherlands, 'De rol van voogden in de bescherming tegen kinderhandel en uitbuiting', GATE Project, February 2013, available at: <http://www.defenceforchildren.nl/images/69/2184.pdf>, p. 22.

173. UNICEF (principle author: Murk, J.), 'Children's rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family', 2015, p. 10.

174. Ibidem.

175. Ministry of the Interior and Kingdom Relations and Ministry of Security and Justice, 'Bestuursakkoord Verhoogde Asielinstroom', 27 November 2015.

children can stay in the same social environment.<sup>176</sup>

### Family reunification

From a durable solutions perspective, the possibilities for separated children who have been granted a residence permit to be reunified with their family members can be considered important. According to a report published by EMN, the Dutch government makes efforts to identify durable solutions for separated children by bringing about family reunification.<sup>177</sup> Nevertheless, there are problems with regard to the reunification with family members as separated children are, according to Dutch national law (*nareisbeleid*), only allowed to invite their parents for family reunification purposes and not their siblings.<sup>178</sup> Thereby, a request to be reunified with the parents should be filed within three months after a residence permit has been granted. Although the family reunification directive allows for this,<sup>179</sup> the fact that there is no possibility to deviate from the three months term in individual cases can, according to The Netherlands Institute for Human Rights, the Advisory Committee on Migration Affairs, the Dutch Refugee Council and Defence for Children – ECPAT, be considered to be in breach with article 8 ECHR.<sup>180</sup>

Despite the fact that under Dutch national law (*nareisbeleid*) separated children are only allowed to invite their parents for family reunification purposes, there is a possibility to file a request for reunification with their brothers and/or sisters under article 8 ECHR at the same time they are filing a request to be reunified with their parents under Dutch national law (*nareisbeleid*). With regard to an application under article 8 ECHR, it is important to point at the fact that the extent of a State's obligation to admit relatives of separated children to its territory will vary according to the particular circumstances of the persons involved and the general interest.<sup>181</sup> For this reason, parents of separated children are sometimes forced to make an inhuman choice as to which child or children they wish to live with.<sup>182</sup> Furthermore, legal charges have to be paid in order to apply for family reunification with brothers and sisters under article 8 ECHR causing practical, that is financial, problems in some cases. Because of the fact that the period during which the Immigration and Naturalisation Service makes a decision upon the requests for family reunification is very long, and since the time during which a decision should be made is in many cases prolonged,<sup>183</sup> separated children are living without their parents for too long.<sup>184</sup> This practice is not in line with article 10 CRC (applications by a child for the purpose family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner).

### Dutch nationality

Even if a residence permit has been granted to a separated child, it is difficult to obtain Dutch nationality. There is a legislative proposal to prolong the time period after which a person can apply for naturalisation from five to seven years.<sup>185</sup> The government wants this new law to enter into force on the 1st of January 2016.<sup>186</sup> The fact that it is very difficult to obtain the Dutch nationality, causes not only problems with work, travel and so on, but

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176. Ministry of the Interior and Kingdom Relations and Ministry of Security and Justice, 'Bestuursakkoord Verhoogde Asielinstroom', 27 November 2015.

177. European Migration Network, 'Policies, practices and data on unaccompanied minors in the EU Member States and Norway', Synthesis Report, May 2015, available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn\\_study\\_2014\\_uams.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn_study_2014_uams.pdf), p. 27.

178. The Dutch NGO Coalition for Children's Rights, 'Children's rights in The Netherlands 2008-2014: 4th Report on the UN CRC of the Dutch NGO Coalition for Children's Rights', August 2014, pp. 70 - 71.

179. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, L 251/12, article 12.

180. The Netherlands Institute for Human Rights, Advies 2013/02, Wetgevingsadvies over het *nareisbeleid*, available at: <http://zoekservice.mensenrechten.nl/StippWebDLL/Resources/Handlers/DownloadBestand.ashx?id=1922>.

181. ECtHR 19 February 1996, 23218/94 (*Gül v. Switzerland*), para. 38.

182. *Ibidem*.

183. Correspondence with Nidos.

184. *Ibidem*.

185. *Parliamentary Papers I* 2013-2014, 'Wijziging van de Rijkswet op het Nederlanderschap ter verlenging van de termijnen voor verlening van het Nederlanderschap en enige andere wijzigingen', 33 852 (R2023), no. 2 (herdruk), available at: [http://www.eerstekamer.nl/behandeling/20140121/voorstel\\_van\\_rijkswet\\_herdruk/document3/f=/vjh687gsk6zd.pdf](http://www.eerstekamer.nl/behandeling/20140121/voorstel_van_rijkswet_herdruk/document3/f=/vjh687gsk6zd.pdf).

186. Government of The Netherlands, 'Becoming Dutch', available at: <https://www.government.nl/topics/dutch-nationality/contents/becoming-a-dutch-national>.

more importantly, it makes children, and adults feel they are not really part of Dutch society.<sup>187</sup> In this sense, it may hamper integration of (former) separated children.

#### **4.2 Transfer or return to a third country**

According to stakeholders and service providers, sending a child to a third country can consist of a return or a transfer to another EU Member State under the Dublin III regulation or to a country other than the country of origin outside the European Union.

With regard to transfers under the Dublin III regulation, it has to be mentioned that the Court of Justice of the European Union (hereinafter: CJEU) ruled that the Member State where the minor actually resides is responsible for assessing the asylum application of a separated child who lodges an asylum application in this Member State and who do not has a family member legally present in another Member State.<sup>188</sup> Therefore, separated children are in principle not returned or transferred to a third country under the Dublin III regulation. Separated children are only transferred from The Netherlands to another EU Member State if this is considered to be in their best interests. This is for example the case if a separated child has an immediate family member (father, mother, brother or sister) or a non-immediate family member (uncle, aunt, cousin or grandparent) lawfully residing in another EU Member State. Subsequently, it should be proved that reunification with such an immediate or non-immediate family member is in the interests of the minor.

In The Netherlands, Nidos has an intensive cooperation to accurately examine the above-mentioned situations before any decisions are made. In this respect, Nidos has the duty to guarantee that an assessment is made of an immediate or a non-immediate family member's factual parenting situation, and the safety of this situation. After this, Nidos informs the Dublin unit of the Immigration and Naturalisation Service about their position on the interests of the child. The opinion of the child is of great influence in this regard. Current practice in The Netherlands shows that, in the majority of cases, the Immigration and Naturalisation Service adopts the opinion of the guardian.<sup>189</sup>

In cases where there is a request for The Netherlands to take over the responsibility for a separated child residing in another EU Member State who has a family member (other than parents or siblings) in The Netherlands, the Immigration and Naturalisation Service contacts Youth Care and the Child Protection Board. Youth Care and the Child Protection Board then investigate whether the parenting situation is safe for a separated child. Youth Care and the Child Protection Board advise the Immigration and Naturalisation Service based on their research whether it is in the interests of a separated child to be transferred to The Netherlands.

From a durable solutions perspective, it has been mentioned by respondents that if separated children are transferred or returned to another Member State under Dublin III, the government cannot know whether this is a durable solution because they are unable to know what will happen to these minors. Questions like: will they be granted a residence permit? Will they have to return to their country of origin? Will they reside undocumented in the other Member State?, remain unanswered.

#### **Return to family in a third country**

Separated children can also be returned to a third country, other than the country of origin, where the parents or other relatives reside. It has to be noted that in practice, it is not always possible to actually reunify a separated child with these family members since they live without documents in third countries. Parents residing in third countries often have difficulties to obtain a residence permit and this hampers family reunification with their children.<sup>190</sup>

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187. Dutch Refugee Council, 'Ik voél me Nederlander: belemmeringen bij naturalisatie voor volwassenen en kinderen met een pardonvergunning' (I feel Dutch: obstacles for naturalisation for adults and children with a pardon residence permit), October 2014.

188. ECJ 6 June 2013, Case C-648/11.

189. Correspondence with Nidos.

190. Ibidem.

### 4.3 Return to the country of origin

Return to the country of origin might also be a durable solution for separated children residing in The Netherlands. According to the Coalition Agreement of the Dutch government, separated children should be returned as soon as possible to their country of origin and be reunified with their family.<sup>191</sup> It should be highlighted that, although the CRC also requires separated children to be reunified as soon as possible with their family, two important differences compared to the government policy as laid down in the Coalition Agreement can be found: the CRC provides for separated children to be reunified with their parents as soon as possible whether this is in the country of origin or in another country. Furthermore, family reunification should not take place if this is not in the best interests of a separated child.

Article 10 of the Return Directive also refers to the best interests of the child by stating that: *“Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.”*<sup>192</sup> In The Netherlands, once it has been decided that a child should return to the country of origin, two situations can occur: children can be returned to a reception facility or be reunified with their parents or other family members. Return to the country of origin of separated children can be forced or voluntary in nature. In The Netherlands, separated children are only forcefully returned if there is, in the opinion of the government, adequate reception available in the country of origin. Adequate reception can, according to the government, consist of parents, family members, institutionalized care, neighbours or people living in the neighbourhood of the child.<sup>193</sup> To investigate whether there is adequate reception in a third country, the government works with Country of Origin Information reports (COI, in Dutch: Algemeen Ambtsbericht) of the Ministry of Foreign Affairs. With regard to these country reports, it is important to point at the fact that they lack child-specific information.<sup>194</sup> Because of this, UNICEF The Netherlands has started to develop so-called ‘child notices’.<sup>195</sup> In these child notices, child-specific information on different countries of origin is provided, and child-specific grounds for persecution are identified. The purpose of the child notices is that they will be used in gaining information and knowledge on the country of origin of a child before deciding upon the application for a residence permit.

In Dutch law, there is no obligation to look at an individual level at the factual circumstances in a particular place when returning separated children to their country of origin.<sup>196</sup> This is one of the main reasons why there is a debate about the definition of ‘adequate reception’ in The Netherlands.<sup>197</sup> The fact that the Dutch government does not conduct a family assessment in the country of origin before returning a separated child is, according to several stakeholders, not in line with article 6 (2) CRC. This provision obligates the State to ensure to the maximum extent possible the survival and development of a child. The State is obliged to ensure that separated children will be able to develop themselves after being returned to their parents in the country of origin. Therefore, a family assessment in the country of origin is required. In the light of the foregoing, it can be argued that article 6 (2) CRC provides a right to a durable return.

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191. Regeerakkoord VVD en PVDA, ‘Bruggen slaan’, 29 October 2012, available at: <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/29/regeerakkoord.html> (in Dutch), p. 29.

192. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, L 348/98, article 10.

193. Kalverboer, M., Faber, J. and Zijlstra, A.E., Ama’s, pleeggezinnen en besluitvorming: het ontwikkelingsbelang van jonge ama’s bij snelle besluitvorming rond het toekennen van een verblijfsrecht, Amsterdam: SWP Uitgeverij 2008, p. 12.

194. UNICEF The Netherlands, ‘Child notice Afghanistan 2013’, available at: <http://www.unicef.nl/nieuws/publicaties/child-notice-afghanistan/>.

195. UNICEF, ‘Child Notices’, available at: <http://www.unicef.nl/wat-doet-unicef/kinderrechten-in-nl/child-notices/english/>.

196. Kalverboer, M., Faber, J. and Zijlstra, A.E., Ama’s, pleeggezinnen en besluitvorming: het ontwikkelingsbelang van jonge ama’s bij snelle besluitvorming rond het toekennen van een verblijfsrecht, Amsterdam: SWP Uitgeverij 2008, Amsterdam 2008, p. 12.

197. Children’s Ombudsman, ‘Advies herijking AMV beleid’, July 2012, available at: <http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2012KOM6A%20herijkingvanhetamvbeleid.pdf>, p. 3.

## Return to a reception facility

In order to be able to return children who are not granted a residence permit and whose family members cannot be found, the Dutch government finances reception houses (also referred to as orphanages) for separated children in Angola, Congo and Sierra Leone.<sup>198</sup> The government was examining the possibilities for setting up a reception facility in Afghanistan,<sup>199</sup> but this project did not succeed due to a lack of cooperation from the Afghan government.<sup>200</sup> According to the Dutch government, the question whether a reception facility can be seen as an ‘adequate reception facility’ must be assessed according to local standards in the country of origin<sup>201</sup>

As stated by UNHCR and NIDOS, return to reception facilities cannot be seen as a durable solution because there are insufficient guarantees.<sup>202</sup> Nidos states in their vision on return that growing up in an orphanage is never in the interest of the child’s development.<sup>203</sup> Moreover, in UNICEF’s report it is stated that: *“the establishment of general ‘adequate reception’ conditions (that is, a reception centre is in place and considered safe for return) would lead to the (theoretical) assumption that no child has a reason to remain in the country of destination.”*<sup>204</sup> In the Concluding Observations of the Committee on the Rights of the Child to The Netherlands, the Committee also expresses its concerns on the forceful return of children in vulnerable situations to their countries of origin where they may end up in these orphanages.<sup>205</sup>

### Return to reception facilities in the country of origin: example of a case known at Nidos

A 16-year-old girl with the Mongolian nationality arrived in The Netherlands and was placed under guardianship of Nidos. The girl was seen as very vulnerable and was therefore placed in a foster family. The girl feels at ease in this family, she is going to school and has made some friends.

In Mongolia, her country of origin, the girl was living with her grandmother. When her grandmother died, she ended up on the streets, alone. The girl met a human trafficker who brought her to The Netherlands. The Immigration and Naturalisation Service did not believe the story of the girl and she received a negative decision on her asylum application. The lawyer and the Nidos guardian were of the opinion that it was not in the best interests of the girl to be returned to Mongolia.

During the asylum procedure of the girl, the Immigration and Naturalisation Service looked at country reports about Mongolia and argued that there was adequate reception available for this girl. However, these country reports indicated that the reception conditions were worrying and very bad compared to national and international standards. The Repatriation and Departure Service could not say anything about what exactly was ‘bad’ or ‘worrying’ in the orphanage in Mongolia. The guardian tried to find out more about these bad conditions but did not receive any reply from NGOs contacted in Mongolia.

The Court in The Netherlands ruled that article 3 CRC was not directly applicable and that the conditions in the orphanage in Mongolia could be seen as adequate according to the country report.

198. Defence for Children – ECPAT The Netherlands and UNICEF The Netherlands, ‘Position paper on the return of separated children to reception houses in countries of origin’, 22 April 2010, available at: <http://www.defenceforchildren.nl/images/20/1085.pdf>, p. 1.

199. Government of the Netherlands, ‘Parliamentary Letter of 10 June 2011 presenting the new emphasis of migration and development policy, available at: <http://www.government.nl/documents-and-publications/parliamentary-documents/2011/06/10/parliamentary-letter-of-10-june-2011-presenting-the-new-emphasis-of-migration-and-development-policy.html>, p. 2.

200. UNICEF (principle author: Murk, J.), ‘Children’s rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family’, 2015, pp. 28-29.

201. Article 3.56(1) under (c) of the Aliens Act 2000.

202. Interview UNHCR, October 2014 and Interview Nidos September 2014. See also: Nidos, ‘vision on return’, p. 6.

203. Nidos, ‘Vision on return’, full text, p. 15 (a short version is available in Dutch at: <http://www.nidos.nl/home/missie-en-visie-van-nidos/visie-van-nidos-op-terugkeer/>).

204. UNICEF (principle author: Murk, J.), ‘Children’s rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family’, 2015, p. 37.

205. Committee on the Rights of the Child, Concluding Observations on the fourth periodic report of the Netherlands, 8 June 2015, CRC/C/NDL/CO/4, p. 12.

Besides the fact that the case described above can be seen as an example of the fact that placement in reception houses cannot be considered a durable solution, this case also illustrates the importance of investigating the actual circumstances in a reception facility. When returning separated children to these facilities, there is no assessment of what kind of effect living in a reception facility, will have on an individual child.

### **Return to the parents or other family members**

If a separated child is not granted or not likely to be granted a residence permit, the authorities try to contact or trace family members in the country of origin. As soon as parents or other family members are found, there is, according to the government, adequate reception available. However, the fact that there is 'adequate reception' does not say anything about the capability and willingness of the family to take care of the child and about the situation in the country of origin itself.

### **Concluding remarks**

There are different immigration and refugee procedures in place for separated children arriving in The Netherlands. Depending on the outcome of these procedures, a residence permit will be granted or a separated child will be transferred to a third country or returned to the country of origin. However, the sole fact that a residence permit will be granted or the fact that a separated child must return to the country of origin, does not always mean that a durable solution has been found. For example, once a residence permit has been granted, there is no integration process and, if a separated child returns to the family in the country of origin, no family assessment is conducted by the government and there is no evaluation after a separated child returned. It is striking to note that the best interests of the child only plays an important role in Dublin procedures, that is, transfer of a separated child to another European Member State where family members reside. The best interests of the child principle should also play an important role in other immigration and refugee procedures.

### **Recommendations**

- Let guardians trace family members, especially the parents, in an early stage but always first investigate whether family tracing is safe for the children and their family members. Separated children should, in accordance with the CRC, be reunified with their parents as soon as possible unless this is not in their best interests.
- Conduct an individual family assessment in the countries of origin before returning separated children to their parents/family members. The family assessment carried out by Nidos before separated children will be transferred to family members residing in another Member State of the European Union, could be taken as an example.
- Evaluate the situation of returned separated children and improve national law and policy with this knowledge.
- Develop an integration vision for separated children who have been granted a residence permit.

## 5. Who is responsible for determining durable solutions in The Netherlands?

From previous chapters, it can be concluded that there is no formal durable solutions procedure in place in The Netherlands. In this chapter, different actors involved in the residence procedure of separated children will be discussed. Based on desk research, and on interviews with representatives of these actors, their role with regard to determining durable solutions for separated children will be described.

### 5.1 Nidos

As mentioned in chapter 3, guardianship for most separated children rests with the guardianship authority Nidos.<sup>206</sup> Although guardianship is assigned to an organisation, the tasks are carried out by individual professionals.

#### The guardian

As mentioned before, the State Secretary of Security and Justice has indicated that the guardian plays an important role in determining durable solutions for separated children.<sup>207</sup> The guardian is responsible for the child and together they should make a plan for his or her future.<sup>208</sup> Apart from this short explanation, the State Secretary does not describe the role a guardian should play in a durable solutions process in more detail.

#### Determining a plan for the future<sup>209</sup>

Nidos has adopted a methodology for determining a plan for the future of a separated child. This so-called 'Action Plan Guardianship' has to be finished within six weeks after the arrival of a separated child in The Netherlands. The principal aim of this action plan is to help the minor to be independent at the age of eighteen.<sup>210</sup> According to the methodology, a guardian should follow four steps in order to set up a plan for the future of a separated child:

**Step 1:** inventory. During this step, children describe their strengths as well as their weaknesses. Furthermore, they define positive and negative aspects in their surroundings. The guardians of the separated children, and their foster parents or mentor when involved, will give their view on this. Subsequently, the child and the guardian will make an ecogram, genogram or a life line. Thereby, attention is paid to the situation in the country of origin, the experiences of the minor during the flight, the family situation and to the emotional, social and physical development of the minor. The refugee or migration procedure will also be taken into account.

**Step 2:** analysis. During this step, the risks to harm the development of the child will be analysed. The strengths and weaknesses from step one are taken as a starting point in order to analyse which development conditions will probably not be met. During this step, the guardian uses the Best Interest of the Child Model (hereinafter: the BIC-model). This model will be described in more detail below. When analysing the possible development risks, attention is paid to the situation in The Netherlands and the situation in the country of origin.

**Step 3:** desired results. During this step, the development conditions that might be hampered following the analysis deriving from step two are formulated in a positive way.

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206. Goeman, M. and Van Os, C. (Defence for Children – ECPAT The Netherlands), 'Closing a Protection Gap', national report, December 2010, available at: <http://www.corestandardsforguardians.com/images/11/292.pdf>, p. 12.

207. Letter of the State Secretary of Security and Justice to the House of Representatives, 20 December 2013, only available in Dutch at: <http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjg88tvvfwx>.

208. Ibidem.

209. The Action Plan Guardianship has been based on the so-called 'Delta method'. See for more information: <http://www.nji.nl/Deltamethode> (in Dutch).

210. Correspondence with Nidos.

**Step 4:** action plan. During this step, everything will be made specific, measurable, attainable, relevant, and time-based (SMART). For every development condition that might be hampered, an action plan will be created. It is important to mention that, according to Nidos, many separated children indicate during step one that they want to stay in The Netherlands. However, this is not always realistic because it depends on the outcome of the residence procedure.

The 'Action Plan Guardianship', as it has been described above, should be updated every six months. These updates will stop as soon as a minor has reached the age of eighteen, because at this moment guardianship ends. The Action Plan may be shared with external actors, for example with The Study Centre for Children, Migration and Law (see for a more detailed description of this Centre paragraph 5.3 of this chapter), but only when the separated child agrees with the information being shared.<sup>211</sup>

### **The behavioural scientist**

The behavioural scientist working at Nidos is another important actor. As previously mentioned, behavioural scientists may be consulted by the guardian when there are concerns about the behaviour or development of a separated child. Behavioural scientists may give advice of a mandatory nature to Nidos guardians. They look at the development of separated children and at their needs, thereby taking an individual approach. Their main question is: what does this individual child need for his or her development? With regard to the determination of durable solutions, the age and capacities of a child are considered important by behavioural scientists.<sup>212</sup>

The development of a child should play an important role in the durable solutions process. According to behavioural scientists, cultural recognition is crucial for the development of children. Therefore, if separated children cannot be reunified with their family, Nidos tries to place them in so-called 'cultural foster families'.

If a separated child will not be granted a residence permit and should therefore return to the country of origin, the behavioural scientist may write a report if there are signals provided by the guardian that it is not in the best interests of the child to return. Behavioural scientists may contact the Study Centre for Children, Migration and Law in Groningen or an independent psychologist in order to ask for a report in which the possible consequences for the development of a child in case of a forced return will be examined as well.

### **Determining durable solutions**

Determining the best interests of the child relates to and is considered almost the same as determining durable solutions. The different interests and opportunities in The Netherlands and in the country of origin have to be balanced against each other in order to determine the durable solution for a separated child. For guardians, the 'Action Plan Guardianship' is seen as a starting point for balancing these different interests. Thereby, guardians speak with the minors in order to try to find out what they want when determining the best interests of the child. When determining the best interest of the child during the asylum procedure, Nidos takes General Comment No. 14 into account.<sup>213</sup> Thereby, the potential situation of a child after return is investigated by contacting family members and counter partners in the country of origin and by using general sources of NGOs, for example UNICEF and UNHCR.<sup>214</sup>

Guardians are considered to be responsible for promoting the best interests of the child, for ensuring that the asylum or migration procedure will be carried out carefully, and for ensuring that decisions will be made in the best interests of the child.<sup>215</sup> Furthermore, guardians should ensure that separated children could develop themselves without their development being threatened.<sup>216</sup>

The criteria for determining a durable solution, that is, to investigate the best option for a child, are assigned a different weight depending on the current perspectives of the separated child. Will they be granted a residence

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211. Correspondence with Nidos.

212. Interview Nidos, November 2014.

213. Nidos, 'Statement on the best interests of the child in the asylum procedure', April 2014.

214. Ibidem.

215. Article 1:247 of the Dutch Civil Code, see also: Schippers, M., 'Working with an unaccompanied minor', CONNECT project 2014, p. 13.

216. Dutch Civil Code, see also: Schippers, M., 'Working with an unaccompanied minor', CONNECT project 2014, p. 13.



permit or do they have to return to the country of origin? When determining durable solutions, the guardian should take the real situation with regard to the child's development opportunities into account. This means that the situation and perspectives of the child must be assessed according to local standards; in the country of origin or in The Netherlands. For example, education facilities in Congo are not as good as in The Netherlands so the availability of proper educational facilities should be assessed according to the local standards in Congo. Furthermore, although the educational facilities are not as good as in The Netherlands, it might be better for a child to return to the country of origin because the parents are living there. The possibility of living with family is highly valued by Nidos.

### A vision on return

In 2012, Nidos developed a so-called 'vision on return'. In this vision on return, the issue of durable return is discussed as well. A return is considered durable if there is a realistic development perspective in the country of origin for the separated child.<sup>217</sup> Before describing the vision on return in further detail, it is important to point at the fact that this is Nidos's vision on how it should be instead of representing current practice.

The vision on return may be used before and after the Immigration and Naturalisation Service has made a decision on the application for a residence permit. However, practice shows that many children are not motivated to speak about an eventual return before a negative decision on their application has been made.<sup>218</sup> Whether a guardian is able to discuss both the possibilities in The Netherlands and in the country of origin depends on the individual case.<sup>219</sup>

If the Immigration and Naturalisation Service has decided that a child should return to the country of origin, a guardian should take the following aspects into account:

- Where is a child returning to?
- When there is not yet an agreement on the custody in the country of origin, to what kind of person or institution should the custody be given?
- Is there an independent organisation present in the country of origin that is able to ensure a child is protected?
- How will the monitoring be organised so it will be known whether the return is really durable?
- Does the child agree with the return plan?<sup>220</sup>

If one of these questions is answered negatively, the guardian will try to influence the residence procedure by taking the position that a child cannot return to the country of origin.

With regard to the reunification of separated children with their parents in the country of origin, it is important to point at the fact that Nidos is involved in a pilot project called 'Cross Border Network'. This project aims to investigate how guardians could convince separated children of the fact that it is important to contact their parents or family in the country of origin. For example, guardians will ask children whether they would like to call their family to tell them they are safe. Nidos considers it important to examine together with the family whether it is in the best interests of a child to stay in The Netherlands when the contact details are available, guardians may also contact the family members of a separated child. In order to explain the real opportunities for separated children in The Netherlands to their family, Nidos has taken an active role in contacting the family as soon as possible.<sup>221</sup> Separated children are not likely to give information about their family because they fear

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217. Nidos, 'Vision on return', full text, p. 14 (a short version is available in Dutch at: <http://www.nidos.nl/home/missie-en-visie-van-nidos/visie-van-nidos-op-terugkeer/>).

218. Ibidem.

219. Ibidem.

220. Ibidem, p. 18.

221. Schippers, M., 'Working with the unaccompanied child', CONNECT project 2014, p. 11.

to be returned.<sup>222</sup> If guardians succeed in convincing minors to contact their family, the children often feel relieved when their guardian has explained the real opportunities for the minor in The Netherlands to their family.<sup>223</sup> High expectations the family might have are adjusted in this way.<sup>224</sup> In light of the foregoing, that is, with regard to the fact that guardians try to contact the family in the country of origin at an early stage, it is important to mention that Nidos does not want to be used by the State for forced returns. However, they do want to cooperate with the State in case of durable return. Persons or organisations able to provide information about the country of origin, like the Dutch council for refugees, are consulted by the guardian when this is considered necessary in an individual case.

### **Nidos and other actors**

Nidos guardians interact with other actors, such as the lawyers of separated children, the Immigration and Naturalisation Service and the family members of separated children. According to guardians, there are some good lawyers on whom they can rely, but there are also lawyers who are not considered to be reliable and in these cases guardians feel they have to do everything.<sup>225</sup>

Guardians have the possibility to give information about the child that, in their opinion, will be relevant for the procedure to the lawyer.<sup>226</sup> Moreover, guardians try to provide the Immigration and Naturalisation Service with information before a decision on the application for a residence permit will be made. Nidos has, besides a vision on return, a statement on the best interests of the child in the asylum procedure.<sup>227</sup> According to article 1:247 BW, Nidos is responsible for the physical- and emotional well-being, and for the personal development of separated children placed under their guardianship. For this reason, the guardian has the duty to intervene if it becomes clear that the emotional and physical well-being of a child will be harmed.<sup>228</sup> Nidos guardians should, according to the statement on the best interests of the child in the asylum procedure, intervene when they are of the opinion that a decision of the immigration authorities is not in the best interests of a child.<sup>229</sup> Nidos underlines that this practice is in accordance with article 24 of the Charter of the European Union and with article 3 CRC (the best interests of the child principle).<sup>230</sup>

When there are clear indications that a decision of the Immigration and Naturalisation Service is not in the best interests of the child, the guardian will try to influence the procedure. For example, if guardians consider the current situation and future perspectives in the country of origin to be too uncertain, they are likely to take a position in the residence procedure that it cannot be in the best interests of the child to be returned.<sup>231</sup> Furthermore, when guardianship cannot be transferred and therefore stays with Nidos in case a separated child has to return to the country of origin, Nidos will in most cases also take the position that a child cannot return to the country of origin. However, if the decision of the Immigration and Naturalisation Service is affirmed by the Council of State, guardians feel there is nothing that can be done to change this. In the end, it is up to the Immigration and Naturalisation Service to balance the different interests.

The Repatriation and Departure Service and the Immigration and Naturalisation Service are also contacted if guardians feel their decisions are not in the best interests of the child, that is, they will not provide a durable solution. Thereby, the guardian will attend the conversations a separated child may have with the Repatriation and Departure Service, and the Immigration and Naturalisation Service. Confidential information will only be given to the authorities if the guardian has the consent of the child.<sup>232</sup>

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222. Schippers, M., 'Working with the unaccompanied child', CONNECT project 2014, pp. 10-11.

223. Ibidem.

224. Ibidem.

225. Transcripts interviews with guardians, conducted for the project 'Closing a Protection Gap 2.0', question 13.

226. Ministry of Security and Justice, Letter of the State Secretary of Security and Justice on the article 'Voogden voelen grote druk van overheid' (guardians feel to be under pressure of government), 25 June 2015, available at: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/06/26/reactie-op-artikel-voogden-voelen-grote-druk-van-overheid.html>, p. 3.

227. Nidos, 'Statement on the best interests of the child in the asylum procedure', April 2014.

228. Ibidem.

229. Ibidem.

230. Ibidem.

231. Interview Nidos, September 2014.

232. Ministry of Security and Justice, Letter of the State Secretary of Security and Justice on the article 'Voogden voelen grote druk van overheid' (guardians feel to be under pressure of government), 25 June 2015, available at: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/06/26/reactie-op-artikel-voogden-voelen-grote-druk-van-overheid.html>, p. 3.

In some cases, guardians try to cooperate with IOM. However, this appears to be very difficult in practice since IOM always needs the consent of an individual child for working towards a possible, voluntary return. If the Immigration and Naturalisation Service has not yet made a decision on the asylum application of a separated child, the minor is not likely to give his consent to IOM.

## 5.2 The Immigration and Naturalisation Service

In The Netherlands, the Immigration and Naturalisation Service plays a crucial role in determining the future of a separated child as it is up to them to decide on behalf of the State Secretary of Security and Justice on the residence application of these children.

### No durable solution determination

It can be argued that durable solutions are not determined by decision-makers and other persons working at the Immigration and Naturalisation Service when examining an application for a residence permit. This can be illustrated by current law and policy on immigration and refugee procedures, as described in chapter three. On national level, there is no legal obligation to determine durable solutions or conduct a best interests assessment. This is not in line with the CRC.

The Immigration and Naturalisation Service mainly focus on the question whether a residence permit can be granted under law and/or policy in force at a specific time. This was also mentioned by one of the respondents who indicated that the best interests of the child always has to be balanced against the interests of politicians and the government, making the outcome of the balancing of interests dependent on the political climate at a certain time.<sup>233</sup>

Although the best interests of the child is said to be high on the agenda of the Immigration and Naturalisation Service, it is remarkable that the best interests of the child is rarely explicitly mentioned in decisions upon residence applications of separated children. If a reference to the best interests of the child can be found in a decision, then it is in most of the cases only stated that there is no breach with the CRC. The way in which the best interests of the child were determined, what the best interests of the child are and how the different interests were balanced, is not written down in the decisions. According to the Immigration and Naturalisation Service, this can be explained by the fact that the best interests of the child is already taken into account in the policy with regard to separated children.<sup>234</sup> This is seen as one of the main reasons why it is not necessary to take these interests into account on an individual level as well.<sup>235</sup> However, according to the CRC and General Comment No. 14, a motivation of a decision should be given in every individual case. Because of this, the above-mentioned argument given by the State is not valid. This will be explained in more detail in chapter 6.

From a durable solutions perspective, it is also striking that the question whether there is adequate reception available in the country of origin is answered after the final decision of the Immigration and Naturalisation Service on the application for a residence permit has been made. When a residence permit cannot be granted to a separated child, the Immigration and Naturalisation Service will contact the Repatriation and Departure Service, and hand over the file. The Repatriation and Departure Service investigates whether there is adequate reception available in the country of origin. If there is no adequate reception available for separated children under 15 years of age, the Repatriation and Departure Service can give a positive advice to the Immigration and Naturalisation Service to grant a residence permit (no blame permit, for separated children under 15 years of age, see chapter three).

Only in exceptional circumstances, that is, when it is very clear for the Immigration and Naturalisation Service that a child does not have any living family members in the country of origin and when there are no reception houses financed by the Dutch government, the Repatriation and Departure Service will be contacted *during*

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233. Interview Immigration and Naturalisation Service, February 2015 .

234. Ibidem.

235. Ibidem.

the procedure, and before the final decision, in order to check whether some form of adequate reception is likely to be found. If this is not the case, a ‘no blame permit’ may be granted by the Immigration and Naturalisation Service.<sup>236</sup> As already explained in chapter three, this is only a possibility for children less than fifteen years of age.<sup>237</sup> The asylum request of children between fifteen and eighteen years old is treated in the same way as an asylum request of adult asylum seekers, breaching article 2 CRC and other non-discrimination provisions. For this group of children there is never a check whether there is adequate reception in the country of origin during the procedure, only afterwards. A no blame permit can be granted, but only under the even more stringent criteria for adults.

Thereby, it is important to underline that the Repatriation and Departure Service only starts family tracing after a decision upon a residence application has been made, and the separated child must leave The Netherlands.<sup>238</sup> The aim of family tracing is to realize adequate reception in the country of origin. During the asylum interviews, the Immigration and Naturalisation Service asks questions about the parents and other family members of the separated child, but this information is only used for family tracing in case the child has received a negative decision upon the application for a residence permit. An exception to this practice can be found in the fact that, when it is clear that there are family members residing in other Member States of the European Union, the possibilities to apply the Dublin III regulation are investigated during the procedure. This procedure has been explained in detail in paragraph 4.2.

The fact that, in most cases, family tracing is conducted by the Repatriation and Departure Service after the decision upon a residence application has been made, is not in line with Directive 2013/33/EU stating explicitly that:

*“Member States shall start tracing the members of the unaccompanied minor’s family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests.”<sup>239</sup>*

However, it is important to mention that a State may only start tracing the family of a separated child when this is safe for the family members, and for the child.

### **5.3 The Study Centre for Children, Migration and Law of the University of Groningen**

The Study Centre for Children, Migration and Law (hereinafter: the Study Centre) plays a role in some residence procedures of separated children by conducting a best interests of the child assessment. However, the Study Centre is only consulted when the lawyer of a child is of the opinion that special attention should be paid to the interests of the minor. The best interests of the child assessment of the Study Centre may influence the decision of the Immigration and Naturalisation Service, but in the end it is up to the Immigration and Naturalisation Service, and the Court to decide upon the application for a residence permit.

#### **Assessing the best interests of the child**

The Study Centre assesses the best interests of the child by using the Best Interest of the Child Model. This model is in line with General Comment No. 14 (hereinafter: GC 14) of the Committee on the Rights of the Child. The BIC-model contains fourteen conditions for a healthy development of a child. The departure point of the Best Interests of the Child assessment is the fact that a child has the right to development, as laid down in article 6

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236. Interview Immigration and Naturalisation Service, February 2015.

237. Ibidem.

238. For separated children in the ‘normal’ asylum procedure (AA-procedure), family tracing starts after a negative decision of the Immigration and Naturalisation Service. For separated children in the prolonged asylum procedure (VA-procedure), family tracing starts after a judgment from a Court.

239. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, laying down standards for the reception of applicants for international protection (recast), article 24 (3), underlining by author.

of the CRC. In order to respect this right, a child needs an environment with certain qualities and standards. Furthermore, the BIC-model elaborates the concept of the best interests of the child as laid down in article 3 CRC.<sup>240</sup> The best interests of the child can be interpreted as the right to development and therefore the BIC-model makes a link between article 3 and article 6 CRC.<sup>241</sup>

The BIC-model analyses the best interests of the child in the light of his or her personal development perspective.<sup>242</sup> With the BIC-model, the quality of the social-cultural environment in which a child grows up can be assessed. Moreover, the model distinguishes between pedagogical environmental conditions in two separate spheres: conditions that focus on the position of the child in society and conditions that focus on the child in relation to his or her family. When the conditions of the BIC-model are fulfilled during a certain period of time, it can be argued that there is a certain continuity and stability in a child's life.

## Two questionnaires

The BIC-model is the theoretical framework for the so-called BIC-methodology. As part of the BIC-methodology, two questionnaires have been developed in order to assess the best interests of the child: the Best Interest of the Child Questionnaire (hereinafter BIC-Q) and the Best Interest of the Child Self-Report (hereinafter: BIC-S). The BIC-Q has to be filled in by professionals working with a separated child. The questions of the BIC-S should be answered by the children themselves. Subsequently, the outcome of both the BIC-Q and the BIC-S can be compared. Furthermore, guidelines on how an assessment can be conducted, how information can be gathered, and by who this can be done, are part of the BIC-methodology. The BIC-methodology is in line with the guidelines of GC 14, this means that besides the BIC questionnaires, other questionnaires can be used as well in order to assess the social and emotional development of an individual child. Children above ten years of age can fill in the BIC-S. Children younger than ten can be asked about the quality of their living environment during a conversation (part of BIC-methodology).

## The BIC-Questionnaire

As already stated above, children need an environment with certain qualities and standards in order to respect their right to development. These qualities and standards are enshrined in the fourteen conditions of the BIC-Q. In case the quality of one of the fourteen conditions is considered insufficient over a longer period of time then the child is considered more vulnerable.<sup>243</sup> Furthermore, for each condition of the BIC-Q that is unfulfilled, it can be determined which articles of the CRC are violated in addition to article 3 and 6 CRC.<sup>244</sup>

## The conditions of the BIC-Q

The BIC-Q contains 14 questions. When answering these questions, it can be assessed whether the fourteen conditions of the BIC-model are (potentially) violated. Furthermore, it can be determined whether the provisions referred to in the CRC are available in the present or future of the separated child.<sup>245</sup> By answering the first seven questions, the quality of the family can be assessed: a child should receive adequate care, that is, care that fulfils the basic needs; the direct physical environment of a child should be safe; there should be an affectionate climate, that is, the parents are loving their child and are able to raise him/her; the child should be raised in a supportive and flexible way; the parents should behave as an example for the child and they should be interested in their child.<sup>246</sup>

Subsequently, the quality of the society can be assessed by answering the other seven questions of the BIC-Q: the parents should, in the circumstances in which they live, be able to give their child continuity in the development;

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240. Zijlstra, A.E., 'In the best interest of the child? A study into a decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective', PhD thesis: University of Groningen The Netherlands, 2012, p. 47.

241. Ibidem, p. 9.

242. Ibidem, p. 47.

243. Ibidem, p. 91.

244. Ibidem.

245. Kalverboer, M. et al., '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* (22) 2011, pp. 41–52, p. 42.

246. Zijlstra, A.E., 'In the best interest of the child? A study into a decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective', PhD thesis: University of Groningen The Netherlands, 2012, pp. 47-48.

the needs, wishes, feelings and desires of the child should be taken seriously by the child's environment; the family and the child should have a social network; the child should receive suitable education and be able to develop his personality and talents; the child should have contact with children of (almost) the same age; there should be adequate behaviour of children and adults that sets an example for the child; and there should be stability in living circumstances and in the future perspective of a child.<sup>247</sup>

By using the BIC-Q, the current situation in which children find themselves can be compared with a possible situation X and a possible situation Y. Situation X may, for example, be the situation in which a child resides with a residence permit in The Netherlands and situation Y may be the situation in which a child will be returned to the country of origin. Furthermore, it is also possible to compare, for example, a situation in which a child is living in a large-scale reception facility with a possible situation in which a child is living in a foster family or in a small-scale reception facility.

### **The BIC Self-Report**

In the BIC-S, separated children can give their opinion on the quality of their current living environment. They can also indicate how they think this would be when living somewhere else.

The BIC-S starts with questions about the family situation in which a child grew or is growing up. Children have to answer questions on care, that is, food, drinks and possessions; safety in and around their house; contact with their caregiver; structure and rules; examples by their caregivers; interest in who they are; and upbringing history and future.

Subsequently, children have to answer questions on their surroundings, that is, their neighbourhood and society. Questions are asked on whether they have enough privacy, whether they receive enough support within their network, at school, from friends and in their life course, for example whether they have moved a lot, and whether there are things in their life which they find harmful.

### **Using the BIC-Q and BIC-S when determining durable solutions**

The theoretical concept of the BIC-methodology, including both the BIC-Q and BIC-S, may be a model for a formal durable solutions process in The Netherlands. In order to determine a durable solution for a separated child, the Study Centre should write a report for every individual child in order to investigate what kind of solution can be considered to be a durable solution in the best interests of the child.

As already mentioned above, different situations can be compared by using the BIC-Q and BIC-S. After responding to the different questions, a histogram shows the differences and similarities between the two questionnaires, that is, between the opinion of a professional and the opinion of a child.

The results of comparing the BIC-Q and BIC-S are reflected in the report in which the Study Centre assesses the best interests of a child. Both the BIC-Q and the BIC-S are an important source for the final orthopedagogical report and for professionals since they show how the information collected should be weighted and decided. It follows from the above-mentioned that, in order to be able to determine a durable solution for a separated child, the Study Centre needs information about the country of origin, and information about the quality of the fourteen conditions in The Netherlands and in the country of origin.<sup>248</sup>

### **The Study Centre and other actors**

During the assessment, the Study Centre tries to establish a relationship of trust and invests in an environment in which people feel safe. They tell the persons concerned that the report is in the best interests of the child. They make clear that the outcomes of the assessment will not be used against them. Furthermore, it helps when lawyers inform their clients about the work of the Study Centre and the need for doing this assessment. It is also considered helpful when children know the Study Centre is involved because the lawyer has asked them to be. Children often trust their lawyer. When the guardian and mentors of separated children indicate that an assessment of the Study Centre will help, this is also important for the relationship of trust. The Study Centre consults the child, the lawyer, the guardian, the teacher, and the therapist. Before assessing the best interests of the child, the file is sent by the lawyer. With the BIC-Q, the Study Centre pro-

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247. Zijlstra, A.E., 'In the best interest of the child? A study into a decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective', PhD thesis: University of Groningen The Netherlands, 2012, pp. 48-49.

248. Interview Study Centre, October 2014.

vides lawyers with a tool to include information on children's rights, including the best interests of the child principle and the right to development, in the asylum procedure.<sup>249</sup>

To gain information about the country of origin the Study Centre uses information from country reports issued by, for example, the Dutch State, and NGOs.

#### 5.4 The Child Protection Board

The Child Protection Board is involved in a small number of cases (compared to their overall caseload) of separated children with a nationality of a third country. These separated children reside without any status in The Netherlands and did not file an application for a residence permit. The Child Protection Board will be involved when these children are found in order to protect them because no legal guardian has been appointed due to the fact that they did not file a request for a residence permit. The Child Protection Board will ask the judge to appoint a legal guardian to these separated children. Furthermore, when necessary, they will also investigate in what kind of reception facility a child can be placed.

In most cases, the Child Protection Board is only involved in cases concerning separated children with the nationality of a Member State of the European Union. Because of the fact that they are EU citizens, these children are allowed to stay in The Netherlands without their parents or legal guardian for a maximum period of three months.<sup>250</sup> For separated children with a nationality of an EU Member State, Youth Care will be appointed as guardian instead of Nidos since Nidos can, in principle, only be appointed as legal guardian for separated children with the nationality of a third country. However, if separated children who are EU citizens are seen as potential victims of trafficking, the Child Protection Board may ask the judge to appoint Nidos as legal guardian because this guardianship organisation is specialised in offering protection to (potential) victims of trafficking.<sup>251</sup> If a separated child has a nationality of an EU Member State, and is placed in alternative care in The Netherlands, a durable solution process will be started by tracing the child's family.<sup>252</sup> If the family has been found, their suitability and willingness to take back the child will be investigated.<sup>253</sup> Family investigations in the country of origin are usually carried out by the Child Protection Board together with the embassy, and the central authority of both The Netherlands and the country of origin.<sup>254</sup> The possibility for a separated child who is an EU citizen to stay in The Netherlands is only explored after all other options, of which the first is reunification with the family in the country of origin, are investigated.<sup>255</sup>

#### 5.5 The judge

Judges specialised in migration law deal with cases of separated children who appeal against the decision of the Immigration and Naturalisation Service on their application for a residence permit. It is important to note that these cases are not considered by a juvenile court. It has been indicated by respondents that it is very important that a juvenile judge will be given a role in cases of separated children in order to ensure that the best interests of the child are sufficiently taken into account.<sup>256</sup> When a child cannot be granted a residence permit on migration grounds, there might be a possibility to find a ground in youth law.

At this moment, the only situation in which a juvenile judge has a role in migration cases is when it has to be decided whether a child should be placed outside the family (in Dutch: *ondertoezichtstelling*, also known as OTS). Under juvenile law, children within families residing without a residence permit in The Netherlands may

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249. Zijlstra, A.E., 'In the best interest of the child? A study into a decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective', PhD thesis: University of Groningen The Netherlands, 2012, p. 91.

250. De Witte, I., and Pehlivan, M.T., 'Vulnerability of Bulgarian and Romanian children to Trafficking in The Netherlands and in Brussels', Mario project, Budapest, December 2014, available at: [http://tdh.ujlap.hu/upload/document/7227/Mario\\_Netherlands\\_Web.pdf](http://tdh.ujlap.hu/upload/document/7227/Mario_Netherlands_Web.pdf), p. 45.

251. Ibidem.

252. Ibidem, p. 63.

253. Ibidem.

254. Ibidem.

255. Ibidem.

256. Interview with a judge, April 2015.

be taken into care and placed outside the family when a serious threat in their development can be found. Subsequently, these children may be granted a residence permit. Although this might be considered to be a biased interference in migration issues, it is important to take account of the fact that migration and juvenile law both have their own approaches, and juridical framework.<sup>257</sup> When a child risks to be returned to the country of origin, it depends on the individual case whether this return can be considered to be a serious threat for the emotional and physical well-being of a child.<sup>258</sup> Whether this is the case depends on the history of a child, the family situation, rootedness in Dutch society, and other factors. In cases involving a juvenile judge, the best interests of the child can be taken into account by the judge, while this is not possible when examining the same case from a migration law perspective.

During the interviews conducted for this project, judges indicated they feel stuck in the current system. One of the respondents has indicated that when a case comes before the Council of State, everything strands. If a judge pays more attention to the best interests of the child, the government does not want this and then it will be blocked by the Council of State.<sup>259</sup> According to a letter of the Minister of Security and Justice, migration judges take the opinion of the guardian and the best interests of the child sufficiently into account when handling a case.<sup>260</sup> However, judges indicated during the interviews that when there is no possibility to grant a residence permit on asylum grounds, there is, in practice, nothing left since the special residence permit for separated children has been abolished.<sup>261</sup> Judges dealing with migration law cases of separated children pointed at the fact that they have almost no possibility to take the best interests of a child sufficiently into account. There is insufficient space in migration law for judges to form their own view of what kind of solution is in the best interests of the child.

According to one of the judges participating in this project, a policy change is needed before durable solutions can be determined for separated children residing in The Netherlands.

## 5.6 The Repatriation and Departure Service

In case of a negative decision upon a residence application of a separated child, the Repatriation and Departure Service receives the file from the Immigration and Naturalisation Service. When the separated child has to leave the Netherlands, the Repatriation and Departure Service will assist the child with his or her return, under the condition that there is adequate reception available in the country of origin.<sup>262</sup> The Repatriation and Departure Service has to investigate whether there is adequate reception available in the country of origin. A Repatriation and Departure Service supervisor, specialised in dealing with minor foreign country nationals, will do so in close cooperation with the guardian from Nidos.<sup>263</sup> The availability of adequate reception is assessed according to the local conditions. If family members can be found in the country of origin, there is, according to the Repatriation and Departure Service, in principle adequate reception available. However, there is no investigation about whether the family is actually capable and willing to raise the child and whether it is safe for a child to return to this family. Besides family members, the return houses in Congo, and Angola are considered to be adequate reception as well.

One of the respondents to the interviews conducted for this research indicated that:

*“Basically, the return policy is very simple. When a residence permit has not been granted to a separated child, he or she must return to the country of origin. However, there is a medical check before a child is actually returned and we look whether there is adequate reception available.”<sup>264</sup>*

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257. Judgement of the Court of first Instance in Amsterdam, no. 13-611/539597, ECLI:NL:RBAMS:2013:9771, para. 3.

258. Ibidem.

259. Interview with a judge, April 2015.

260. *Parliamentary Papers II 2012 – 2013*, letter to the Parliament on the revision of the policy for separated children, 17 May 2013, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2012/06/22/kamerbrief-herijking-beleid-alleenstaande-minderjarige-vreemdelingen>. See also: Defence for Children and UNICEF, ‘Bescherming alleenstaande minderjarige vreemdelingen in de knel: zorgpunten en aanbevelingen bij de herijking van het beleid’, April 2013, available at: <http://www.defenceforchildren.nl/images/20/2547.pdf>, p.4 .

261. Interview with a judge, April 2015.

262. Correspondence with the Repatriation and Departure Service.

263. Ibidem.

264. Interview Repatriation and Departure Service, February 2015.



In the application and return policy, the best interests of a child is, according to the Repatriation and Departure Service, taken into account. However, this is not set out on paper and there is no 'checklist'.<sup>265</sup>

### **The Repatriation and Departure Service and other actors**

Although the Repatriation and Departure Service will never take a position in a particular case, they can refer cases back to the Immigration and Naturalisation Service if it is not possible to return a separated child to the country of origin. In these cases, a no blame permit can be granted by the Immigration and Naturalisation Service. Furthermore, there is a possibility to have harrowing cases examined by the State Secretary of Security and Justice. In these cases, a residence permit may be granted by the State Secretary of Security and Justice by using his discretionary power. Furthermore, the Repatriation and Departure Service cooperates with Nidos. They feel they have a good relation with Nidos and the possibility to start a dialogue in case a separated child should be returned to the country of origin, and to create a return strategy together.<sup>266</sup> In the light of the foregoing, it is also important to point at the fact that there is a pilot project called 'Cross Border Network'. In this project, guardians try to convince separated children residing in The Netherlands of the importance to contact their family in the country of origin as soon as possible.<sup>267</sup>

### **5.7 The lawyer**

Lawyers defend the interests of separated children, and therefore it is important for them to keep asking questions in order to know what a child really wants. Furthermore, it is important to know whether there is family in the country of origin, what the reasons were for coming to The Netherlands and whether this was the own choice of a child. A lawyer has to figure out the different motives of a separated child for coming to The Netherlands. During the interviews, conducted for this project they indicated that it is not always easy to get a good view of the entire situation.

When determining a durable solution for a separated child, a lawyer has to investigate what the juridical possibilities are. According to lawyers, a durable solution is a solution in the best interests of the child. However, there should always be a basis in law for granting a residence permit.

One lawyer indicated that the determination of a durable solution is not part of the residence procedure. This can, according to this lawyer, be illustrated by the fact that lawyers do, in general, not ask the question whether it might be better for a separated child to return to the parents in a third country or in the country of origin. As a lawyer defending the case of a separated child, they only think about that option after the application for a residence permit has been denied.<sup>268</sup> Therefore, determining a durable solution can be considered to be a fall-back if the first option, obtaining a residence permit, has failed.

### **The lawyer and other actors**

Lawyers consult, amongst others, the guardian of separated children, the children themselves, the school, the family members, and the foster parents.

As explained before, a separated child residing in The Netherlands is under custody of a guardian working at Nidos. Lawyers indicated that it may happen that the guardian holds an opinion about the future of separated children under their guardianship that differs from the opinion of the children themselves. One lawyer indicated that, if he thinks the child has a point, he will start a discussion with the guardian.<sup>269</sup> However, the worst consequence of this situation is that a lawyer, when differences in views remain, no longer wants to represent the child.<sup>270</sup> In practice, these kind of situations do not occur very often but in theory this problem always exists.<sup>271</sup>

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265. Interview Repatriation and Departure Service, February 2015.

266. Ibidem.

267. Ibidem.

268. Interview with a lawyer, December 2014.

269. Ibidem.

270. Ibidem.

271. Ibidem.

According to one of the interviewees, Nidos and Defence for Children - ECPAT should be accorded a more important role in refugee and migration procedures, and in the durable solution process.<sup>272</sup> In this way, the Immigration and Naturalisation Service will be provided with a children's rights report by means of which a durable solution in the best interests of the child can be determined.<sup>273</sup>

## 5.8 International Organisation for Migration (IOM)

In The Netherlands, the International Organisation for Migration (hereinafter: IOM) is financed by the Ministry of Security and Justice, the Ministry of Foreign Affairs, and the European Union.<sup>274</sup> IOM organises voluntary returns of separated children to their countries of origin. IOM has a role with regard to determining durable solutions for a separated child in the sense that they can indicate that they are not allowed to facilitate a voluntary return because there is, for example, insufficient information available about the situation in the country of origin, like a confirmed handover to the parents or guardian in the Country of Return.

### Organising a voluntary return

In order to organise a voluntary return, IOM The Netherlands needs the consent of all persons of the so-called 'triangle': the separated child, the parents in the country of origin, and the Nidos guardian of a separated child. Without the consent of one of these three actors, the return will not be facilitated by IOM.

In the return policy of the Dutch government, there are no financial limits with regard to the amount of money that can be given to a separated child who wants to voluntarily return to the country of origin.<sup>275</sup> On the contrary, there are financial limits to the amount IOM can provide to a separated child who voluntarily wants to return. According to IOM's policy, a separated child who is returning voluntarily to the country of origin will be granted an amount of 2.500 euros but in some cases,<sup>276</sup> children can be provided 8.000 euros as well. However, this is only in cases where the reception is not organized by the guardian after return, but by an institution.<sup>277</sup> Sometimes IOM also provides a so-called 'in kind contribution'. IOM the Netherlands bought, for example, a Dutch cow for a separated child returning to his country of origin.<sup>278</sup> According to IOM, separated children are more likely to negotiate on the possibilities for voluntary return with the Repatriation and Departure Service because they are able to provide them with a higher amount of money than IOM is able to offer.

IOM has its own rules and guidelines for facilitating voluntary returns of separated children. According to these guidelines, minimum standards should be met before a child can be returned to the country of origin. A child should be, for example, accompanied when travelling by plane. With regard to the guidelines and rules IOM applies to voluntary returns, it is important to stress that IOM does not establish a personal relationship with a separated child. They only try to give information about a possible return in a child-friendly way. Furthermore it is, according to IOM, not up to them to determine the best interests of the child and durable solutions since IOM does not give value judgements.<sup>279</sup> This is up to the guardian. Thereby, IOM does not say anything about the safety in a particular country. They only investigate the possibilities in a country; IOM workers in the field can investigate the possibilities.

### IOM and other actors

As already mentioned, IOM needs the consent of all persons being part of the 'triangle'. One of the respondents to the interviews indicated that in the process to obtain consent for a voluntary return of the three actors of the 'triangle', the age of the child plays a role in the sense that the younger the child, the more IOM negotiates

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272. Interview with a lawyer, December 2014.

273. Ibidem.

274. International Organization for Migration (IOM), 'About IOM', available at: <http://www.iom-nederland.nl/nl/over-iom/over-iom> (accessed: 19 January 2015).

275. Interview IOM The Netherlands, September 2014.

276. Since 1 July 2015, before this date, a separated child who was returning voluntarily to the country of origin was granted an amount of 4.000 euros.

277. Correspondence IOM.

278. Interview IOM The Netherlands, September 2014.

279. Ibidem.

with the Nidos guardian.<sup>280</sup>

## 5.9 Beyond Borders

Beyond Borders is an organisation that works with youth networks consisting of (former) separated children who already returned to their country of origin. For Beyond Borders, durable solutions are part of the structure of the organisation. Their principal aim is to share information about the reality of a return and to make children orientate themselves on their future. Beyond Borders is not part of the government and because of these children are more likely to trust them. This could be explained by the fact that an organisation like Beyond Borders does not have any interests in the return and only provides minors with information.

Beyond Borders works via social media. For example, they have set up closed Facebook groups in which minors residing in The Netherlands and former separated children who already returned to their country of origin can ask questions and/or talk with each other. The main aim of the work of Beyond Borders is to make minors aware of their situation and of their possibilities: return, or live without documents in case a residence permit will not be granted in The Netherlands. The importance of providing separated children with information about their possibilities was, according to Beyond Borders, clearly demonstrated by a minor who said: *"If I only knew, then I would have acted differently"*.<sup>281</sup>

In order to help separated children to discover their talents, skills, and needs for realising their dreams, Beyond Borders organises so-called empowerment trainings.<sup>282</sup> The empowerment trainings are organised at the reception facilities because Beyond Borders is of the opinion that minors are more open to information at this stage.<sup>283</sup> This statement is interesting because other respondents, for example the Immigration and Naturalisation Service and Nidos, indicated that separated children will only talk about other possibilities than staying in The Netherlands if they know they will not be granted a residence permit.

Beyond Borders provides (former) separated children with all the information necessary but then it is up to them to determine their own durable solution. Thereby the guardian is considered to play an important role. Beyond Borders is working together with Nidos and the Central Agency for the Reception of Asylum Seekers in trying to provide empowerment trainings to all separated children residing in a Process Reception Location (POL).<sup>284</sup> However, the government has indicated they do not want to give money for this and funds are stating that this is a task for the government.

## 5.10 Defence for Children – ECPAT The Netherlands

Defence for Children-ECPAT provides information on the rights of separated children, and investigates violations of these rights. Furthermore, this organisation writes so-called children's rights reports which can be used by a lawyer of a separated child to support his or her legal case. If the Study Centre is involved in a case as well, and has conducted a best interests of the child assessment, this information is used for and/or referred to in the children's rights report. One of the respondents has argued that the children's rights reports of Defence for Children – ECPAT should be used by the Immigration and Naturalisation Service in order to determine durable solutions in the best interests of the child.

Besides providing information on the rights of separated children, and investigating violations of these rights, government institutions are being reached out to by advocacy and lobby for better protection of the rights of separated children, including the determination of durable solutions in the best interests of the child.

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280. Interview IOM The Netherlands, September 2014.

281. Interview Beyond Borders, September 2014.

282. IOM International Organization for Migration The Netherlands, Focus on Migration, January 2013 (no. 1), p. 14.

283. Interview Beyond Borders, September 2014.

284. Interview with a judge, April 2015.

### **Concluding remarks**

In The Netherlands, there are different actors determining durable solutions for separated children. However, when analysing the results of the interviews conducted with representatives of organisations and institutions who may have a role in the durable solutions process, it becomes clear that they do this on their own and that there is no formal and uniform durable solution process in place in The Netherlands.

Some of the actors described in this chapter are involved in, and are carrying out parts, of what should be one durable solutions process. Each actor decides what kind of solution could be considered to be a durable solution for a separated child. When determining durable solutions, the different actors sometimes negotiate with and/or consult other actors, or take their views into account, but sometimes not. None of the actors has the final responsibility.

## Recommendations

- The best interests of the child should be better enshrined in policy, and legislation with regard to separated children. The way in which the best interests of the child is assessed and balanced against other interests must be written down by the immigration authorities so that it can be controlled and monitored.
- Introduce a best interests determination procedure that will start as soon as a separated child has arrived in The Netherlands in order to determine a durable solution for this separated child in line with General Comment no. 14 and the BIC-model. It should be clear what kind of steps should be taken and by whom. Furthermore, one of the actors involved should have the final responsibility.
- Investigate the possibilities to use the BIC-method, including the instruments BIC-Q and BIC-S, as a pilot model for a durable solution process in The Netherlands. The theoretical concept of the BIC-model, including the instruments BIC-Q and BIC-S, may be a method for a formal durable solutions process in The Netherlands.
- The Children's Protection Board writes reports about the situation of a child under their care/ guardianship. In these reports the development of a child is taken into account. This should also be done with regard to every separated child applying for a residence permit in The Netherlands, for example by Nidos. In combination with the Action Plan Guardianship, that is created together with the separated child.
- Use child focused country of origin information reports, such as the UNICEF Child Notices as described in paragraph 4.3, in the durable solution process.
- In the durable solution process, a more important role should be given to the guardian. The opinion of the guardian with regard to what kind of solution can be considered to be a durable solution in the best interests of the child should be taken into account by the Immigration and Naturalisation Service and by the Courts when deciding upon the application for a residence permit of a separated child. However, all guardians should be trained to make these kinds of decisions.

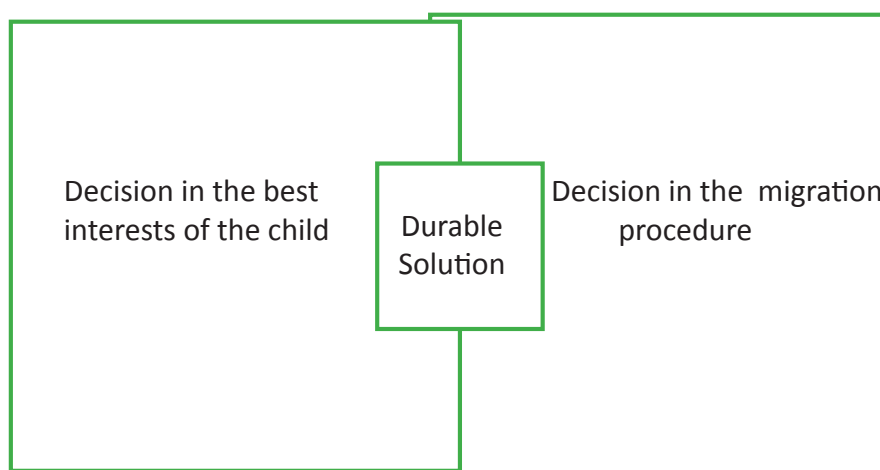
## 6. Durable solutions in practice

As already stated in chapter 5, there is no uniform and formal durable solution procedure in The Netherlands. Whether durable solutions for separated children are determined and implemented differs depending on the individual case. However, there are, despite the lack of a formal procedure, different actors involved in determining durable solutions for separated children. When analysing the role of these different actors, a difference in treatment between separated children with and without the nationality of a Member State of the European Union can be found. For separated children with the nationality of an EU Member State, the question whether it is possible to be reunified with their family in the country of origin is answered first, and only when this does not seem to be in their best interests the authorities investigate whether they need protection. On the contrary, for separated children with a third country nationality the question whether they need protection comes first. In the majority of cases, family tracing will only be conducted by the authorities after the application for a residence permit has been rejected by the Immigration and Naturalisation Service. Because of these differences, it can be argued that there is a difference in the level of precision, and in the way in which durable solutions for separated children are determined. This difference in treatment based on nationality is not in line with article 2 CRC and other non-discrimination provisions.

### 6.1 When is a durable solution implemented and how is it reviewed?

In case durable solutions are determined for separated children with a nationality of a third country, they are often determined and implemented after the Immigration and Naturalisation Service has decided upon the application for a residence permit.

It is important to stress that in current practice, durable solutions are only implemented if the outcome of the residence procedure is the same as the outcome of the durable solutions process, that is, the determination of a durable solution in the best interests of the child. In fact, there are two different systems in place in which the future of a child is determined: the immigration and refugee procedure and procedures in which the best interests of the child is determined and durable solutions are sought.



As already stated in chapter 5, the best interests of the child, although said to be high on the agenda, is rarely explicitly mentioned in decisions upon residence applications of separated children. Because of this, it can be argued that the best interests of the child are insufficiently taken into account. There is no role for this principle during the procedure and interviews with the Immigration and Naturalisation Service and therefore it is also not incorporated in the decision upon an application for a residence permit. According to the Immigration and Naturalisation Service, this can be explained by the fact that the best interests are already taken into account, and considered as a primary consideration, in the policy with regard to separated children.<sup>285</sup> This is seen as one

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285. Interview Immigration and Naturalisation Service, February 2015.

of the main reasons why it is not necessary to take these interests into account on an individual level as well.<sup>286</sup> However, the CRC and General Comment No. 14 clearly state that it is not sufficient to only mention that the best interests of the child is a primary consideration because a motivation of the decision should be given in every individual case concerning children.<sup>287</sup> In balancing the different interests involved, States are obliged to thoroughly examine the interests of the child and to ensure that these interests receive a prominent place. This has also been confirmed by the ECtHR. In the *Neulinger*<sup>288</sup> case the ECtHR notes that “*there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount.*” Although the case of *Neulinger* concerns child abduction, the ECtHR refers several times to her judgement in *Neulinger* in cases concerning migration.<sup>289</sup> The ECtHR provides in *Neulinger* a clear method for the establishment of the interests of the child. First of all, it considers that the interests of the child entail two limbs.<sup>290</sup> On the first hand, it dictates that the child’s ties with its family must be maintained, except in cases where the family has proved particularly unfit. On the second hand, it is clearly also in the child’s interests to ensure its development in a sound environment.<sup>291</sup> Furthermore, the ECtHR indicates that the establishment of the interests of the child requires an individual assessment of the developmental perspective of the child. Important factors in this respect are age, maturity, presence or absence of parents, environment and experiences of the child.<sup>292</sup> In the national procedure, a thorough analysis of the entire family situation must be conducted, in which factual, emotional, psychological, material and medical aspects must be a part of the balance of interests.<sup>293</sup> In this context, it is of the utmost importance to note that the ECtHR has held that domestic courts must conduct an in-depth examination of the entire family situation.<sup>294</sup>

Furthermore, the fact that the best interests of the child must be taken into account in cases in which children are involved has also been confirmed in the case *Jeunesse*.<sup>295</sup> In the *Jeunesse* judgement, the ECtHR has clarified that, although the interests of the child cannot be decisive, such interests certainly must be afforded significant weight.<sup>296</sup> The ECtHR notes that national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of the negative decision and sufficient weight should be attached to the best interests of the children directly affected by it.<sup>297</sup> Thus, the Immigration and Naturalisation Service is under the obligation to consider the practicality, feasibility and proportionality of a negative decision, because the consequences of this decision must be proportionate in relation to the effective protection of the best interests of the child involved.

In the Concluding Observations to the Dutch government, the members of the Committee on the Rights of the Child have expressed their concern about the fact that the best interests of the child are not sufficiently taken into account in asylum cases, and recommends the Netherlands to ensure that the best interests of the child is taken as a primary consideration.<sup>298</sup>

In many cases, the determination of durable solutions in The Netherlands can be considered retrospective since durable solutions for separated children are often determined after the final decision on the residence application has been made. One very clear example of this practice can be found in the fact that only after

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286. Interview Immigration and Naturalisation Service, February 2015.

287. Committee on the Rights of the Children, ‘General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)\*’, CRC/C/GC/14, 29 May 2013, para. 6.

288. ECtHR 6 July 2010, 41615/07 (*Neulinger and Shuruk v. Switzerland*).

289. ECtHR 28 June 2011, 55597/09 (*Nunez v. Norway*), para. 84. ECtHR 3 October 2014, 12738/10 (*Jeunesse v. the Netherlands*), para. 75.

290. ECtHR 6 July 2010, 41615/07 (*Neulinger and Shuruk v. Switzerland*), para. 136.

291. *Ibidem*.

292. *Ibidem*, para. 138.

293. *Ibidem*, para. 139.

294. *Ibidem*.

295. ECtHR 3 October 2014, 12738/10 (*Jeunesse v. the Netherlands*), para. 109.

296. *Ibidem*.

297. *Ibidem*.

298. Committee on the Rights of the Child, Concluding Observations on the fourth periodic report of the Netherlands, 8 June 2015, CRC/C/NDL/CO/4, pp. 12–13.

it has been determined that a child must return to the country of origin, the family of this child is traced. However, from a durable solutions perspective, family tracing should take place in an early stage but it must always be first investigated whether family tracing is safe for the children and their family. Current practice regarding family tracing goes against the most fundamental tenet of the CRC because, according to the CRC, family options should be explored first. In principle, separated children should be reunified with their parent(s) unless this is not in their best interests. The fact that family tracing is, for separated children with a nationality of a third country, not conducted in an early stage when this is safe for the children and their family members, is therefore not only in breach with the CRC but also undermines a durable solution process.

In light of the above-mentioned concerns regarding family tracing, it is also important to point at the fact that if family tracing is conducted by the authorities, the very existence of family members is sufficient in order to say that there is adequate reception available in the country of origin. There is no family assessment, that is, the authorities do not investigate whether the family is actually capable to take care of the child and to ensure his or her development. This practice is not in line with article 6 CRC since article 6 (2) CRC explicitly states that the State shall ensure to the maximum extent possible the survival and development of the child. This article should be central when determining durable solutions for separated children.

### **Monitoring durable solutions**

In case durable solutions are determined for separated children, they are not reviewed after implementation. There is no monitoring mechanism in place when separated children have been returned to the country of origin or to a third country. According to the Repatriation and Departure Service, their responsibility ends when a child has been returned to the country of origin.<sup>299</sup> IOM has indicated that they only monitor the return procedure, and not the well-being of a child in the country of origin.<sup>300</sup> Besides the fact that there is no monitoring procedure in place for separated children who were returned to their countries of origin, it is important to note that monitoring is also lacking for separated children who have been granted a residence permit. In addition, positive decisions are not motivated by the Immigration and Naturalisation Service, and for this reason it is impossible to monitor or check the decision and determine whether this was a durable solution in the best interests of the child.

Regarding the monitoring of separated children who have been returned to their countries of origin, it is, for (former) guardians, difficult to know who they need to contact in the country of origin when a child has been returned. As one guardian said: *“away is away”*.<sup>301</sup> Other guardians indicated they have no idea of what is going to happen to separated children when they will be returned to the country of origin.<sup>302</sup> It was stated that before guardians know where a child is going, he or she is already gone.<sup>303</sup>

The fact that it is difficult for guardians to stay in contact with children who returned to the country of origin has also been confirmed in the report ‘Children on the move’, issued by IOM. According to this report, it depends on the cooperation with the children’s guardians and/or legal representatives in the country of origin whether there will be any exchange of information about the well-being of the child who has been returned.<sup>304</sup>

With regard to monitoring the situation of separated children who returned to reception houses financed by the Dutch government, respondents pointed at the fact that it would not be so difficult to organise a monitoring process since the NGOs working in these reception houses can easily report back to Nidos or to the Dutch government. The reasons why there is no monitoring/reporting mechanism in place are unclear.

In 2014, the HIT Foundation published the results of a study carried out on the development of a Monitoring and Evaluation methodology for returned minors.<sup>305</sup> Nidos, the University of Groningen and Micado Migration

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299. Interview Repatriation and Departure Service, February 2015.

300. Interview IOM, September 2014.

301. Transcripts interviews with guardians, Closing a Protection Gap 2.0, NA4 en NA5.

302. Ibidem, NA5.

303. Ibidem, NG8.

304. International Organization for Migration (IOM), ‘Children on the move’, 2013, available at: [http://publications.iom.int/book-store/free/Children\\_on\\_the\\_Move\\_19Apr.pdf](http://publications.iom.int/book-store/free/Children_on_the_Move_19Apr.pdf), p. 53.

305. Nidos, Micado Migration and University of Groningen, ‘Monitoring Returned Minors’, Final Report summer 2014, available at: <http://hitfoundation.eu/wp-content/uploads/2012/12/1.-Final-report-MRM-model-and-Toolkit.pdf>.



were strategic partners in this research.<sup>306</sup> In the frame of the MRM project, the BIC-model was used as a basis for the Monitoring Returned Minors Model and used for the first time in a country of return in order to judge the development perspective of the returned minors. One hundred and twenty minors who returned to Kosovo and 30 minors who returned to Albania participated in this project.<sup>307</sup> As has been indicated in the MRM report,<sup>308</sup> it is important to underline the importance to know the effects of the Dutch system on returned minors. According to the report, the MRM model *“creates a monitoring learning loop that can systematically improve the future perspectives of returned minors”*.<sup>309</sup>

Furthermore, besides the absence of a monitoring mechanism for separated children who have been returned to their country of origin, there is also no monitoring system in place for separated children who have been granted a residence permit in order to assist them in their transition to adulthood.<sup>310</sup>

Several respondents indicated that evaluation and monitoring should be essential elements of the durable solution process.<sup>311</sup>

The monitoring of returned minors is very important. In this way, the circumstances in which a child is placed by the Dutch authorities will be known instead of making decisions by relying on country reports without a real investigation in the country of origin. According to a report published by UNICEF in 2015, there is little knowledge on how separated children are doing and on the impact their return has had on their lives.<sup>312</sup> The Study Centre has conducted a research on asylum-seeking families who are returned to Kosovo.<sup>313</sup> This gives information on what kind of factors influence a successful return, that is, a return without many emotional problems for the children.

## 6.2 What factors are considered and to what extent are children’s voices heard in this process?

Since there is no formal durable solutions process in The Netherlands, it is difficult to define what kind of factors are considered when determining durable solutions for separated children. During the interviews, respondents indicated the factors that, in their opinion, should be taken into account when determining durable solutions in the best interests of the child. Some of these factors are already taken into account by actors involved in the residence procedures of separated children, but only on an irregular basis, in a greater or larger extent, and depending on the individual case.

According to respondents, it is very important to assess the individual situation of a separated child when determining durable solutions. Besides safety, the availability of basic needs, the existence of child protection systems, the possibilities for self-development, and the extent to which children and/or their family can be self-sufficient are seen as very important factors for the durable solutions process. Furthermore, the child’s individual needs should be taken into account when determining durable solutions and the rights of the child should be respected. Moreover, the ability of an individual child to adapt him- or herself to situations and circumstances in a particular place should be assessed. Another factor that should be taken into consideration is poverty. A separated child may not live below poverty level, whether this would be in The Netherlands, in the country of origin or in a third country. The Immigration and Naturalisation Service should investigate whether there is a real chance that a separated child will be forced to leave the country of origin again for

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306. Nidos, Micado Migration and University of Groningen, ‘Monitoring Returned Minors’, Final Report summer 2014, available at: <http://hitfoundation.eu/wp-content/uploads/2012/12/1.-Final-report-MRM-model-and-Toolkit.pdf>, p. 3.

307. Ibidem.

308. Ibidem, p. 5.

309. Ibidem, p. 7.

310. European Migration Network, ‘Policies, practices and data on unaccompanied minors in the EU Member States and Norway’, Synthesis Report: May 2015, available at: [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn\\_study\\_2014\\_uams.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/emn_study_2014_uams.pdf), p. 35.

311. Interview with a judge, April 2015.

312. UNICEF (principle author: Murk, J.), ‘Children’s rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family’, 2015, p. 5.

313. Nidos, Micado Migration and University of Groningen, ‘Monitoring Returned Minors’, Final Report summer 2014, available at: <http://hitfoundation.eu/wp-content/uploads/2012/12/1.-Final-report-MRM-model-and-Toolkit.pdf>.

economic reasons.<sup>314</sup> According to the vision on return published by Nidos, the availability and accessibility of education is also an important factor if a child has to return to the country of origin.<sup>315</sup>

Other factors that have to be considered when determining durable solutions are the future perspectives of a child, the social and cultural context, the level of vulnerability of a child and the identity of a child.<sup>316</sup> Some of the respondents indicated that the level of participation of a child should be taken into account as well, that is, a child should be able to participate in society whether this is in the country of origin, a third country or in The Netherlands.<sup>317</sup> Furthermore, the way in which the parents are able to take care of the child should be taken into account: do they have, for example, a house?<sup>318</sup> During the interviews, it has also been mentioned that it is important to realise that a durable solution only will find expression if a child has a permanent residence permit.<sup>319</sup>

There have been discussions among respondents about the question whether the age of a child is a factor that should be taken into consideration when determining durable solutions. Some of the interviewees have argued that the younger the child, the bigger the risk is that the development of a child will be harmed.<sup>320</sup> It has also been mentioned that younger children are more likely to indicate they want to return to their parents, even though their parents are not able to protect and act in the best interests of the child.

### The voice of the child

As already described in chapter 3, children between six and twelve years of age are heard by employees of the Immigration and Naturalisation Service who are said to be trained for interviewing separated children. However, questions were raised by respondents to the interviews conducted for this research on the level of training these employees receive. Furthermore, there is no special protocol or training available for these employees.<sup>321</sup> This raises the question whether the interviews for these children can be considered to be child-friendly and whether the level and maturity of an individual child are sufficiently taken into account. During the Closing a Protection Gap Project, separated children indicated they are not sufficiently involved in the decision-making process on a durable solution, and that they are not prepared for the changes when they turn eighteen.<sup>322</sup> Furthermore, one of the separated children participating in this project argued that: *“in the residence procedure, the Immigration and Naturalisation Service is the dominant party.”* (A boy, Congo). During the focus group with young people one of the children mentioned that, when determining durable solutions for separated children, it has to be taken into account that there is a difference between the voice of the child, that is, what a child wants, and what is really possible: *“At this moment, I would like to go to my parents. But that is not an option.”* (A boy, Eritrea).

### 6.3 How the roles overlap and where conflict in views may present. Comments on how these conflicts may be resolved

When analysing the role of different actors with regard to the determination of durable solutions in The Netherlands, it becomes clear that there are differences in views. Differences in views on what kind of solution can be considered to be a durable solution in the best interests of the child are likely to arise most often between the Nidos guardian and the Immigration and Naturalisation Service. Guardians can determine durable solutions in the best interests of the child but they are always dependent on the Immigration and Naturalisation Service on whether or not their view will be taken into account. It is important to point at the fact that there are also insufficient possibilities in law to grant a residence permit because this is considered

314. Interview UNHCR, October 2014.

315. Nidos, 'Vision on return', full text, p. 22 (a short version is available in Dutch at: <http://www.nidos.nl/home/missie-en-visie-van-nidos/visie-van-nidos-op-terugkeer/>).

316. Interview Study Centre, October 2014.

317. Interview Leiden University, October 2014.

318. Ibidem.

319. Interview UNICEF The Netherlands, October 2014.

320. Interview Leiden University, October 2014.

321. Bruin, R. and Kok, S., 'Lessen uit internationale rapporten: het kind in de asielprocedure', *A&MR* 2015 (4), p. 174.

322. Goeman, M. et al., 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities', Leiden: Defence for Children The Netherlands 2011, available at: <http://www.corestandardsforguardians.com/images/22/335.pdf>.

to be in the best interests of the child, and in the interests of his or her development.

Differences in views may also arise between the guardian and the lawyer. One of the respondents indicated that a lawyer sometimes asks a guardian to write a statement, but that a guardian does not agree with this.<sup>323</sup> Furthermore, lawyers indicated that it may happen that the guardian holds an opinion about the future of separated children under their guardianship that differs from the opinion of the children themselves. One lawyer argued that, if he thinks the child has a point, he will start a discussion with the guardian.<sup>324</sup> However, the worst consequence of this situation is that a lawyer, when differences in views remain, no longer wants to represent the child.<sup>325</sup> In practice, these kinds of situations do not occur very often but in theory this problem always exists.<sup>326</sup>

Some respondents have stated that, when children have just arrived in The Netherlands, the views about what should happen with them are more diverse than when the children have already stayed in The Netherlands for a while.

### **How may these conflicts be resolved?**

If the roles overlap and when conflicts in views may present themselves, this should, according to some of the respondents, be resolved by a judge. However, under current policy and law, a judge does not have the possibilities to resolve conflicts in views concerning the determination of the best interests of the child. As already mentioned, judges have indicated during the interviews conducted for this research that they feel stuck in the system.

### **6.4 Limitations for guardians and others responsible for making durable solutions decisions and the lack of ability/will to implement them**

One of the main limitations for guardians and others for making durable solution decisions can be found in the fact that there is no uniform and formal durable solution procedure in place in The Netherlands. Although different actors are determining durable solutions for separated children, they act on their own and do not automatically involve, or negotiate with, other actors. Because of this, policy and law can be considered to be a barrier to the determination and implementation of durable solutions for separated children residing in The Netherlands. One of the respondents has indicated that actors involved in the durable solutions process always have to navigate between the current political climate and the interests of the individual child.

Stakeholders and service providers have also indicated that the fact that the best interests of the child is not taken into account during the interviews with the Immigration and Naturalisation Service, in the residence procedure, and in the decision on the application for a residence permit can also be seen as a limitation for determining durable solutions for separated children. As already described, one of the judges interviewed for this research indicated that judges feel that their decisions are often blocked by the highest general administrative court in The Netherlands: the Council of State. There is, according to this judge, insufficient and in many cases no attention for the best interests of the child in migration cases. In light of the foregoing, it is important to mention the outcome of a research conducted in 2014 by a prominent migration law professor, T.P. Spijkerboer. According to Spijkerboer, the Administrative Jurisdiction Division of the Council of State usually sides with the government rather than the alien. In issues concerning migration law, this court does not act as a guardian of fundamental rights.<sup>327</sup>

With regard to the limitations for guardians for making and implementing durable solutions for separated children, it is important to point at the fact that the guardian is responsible for determining and promoting the best interests of the child.<sup>328</sup> However, the guardian is very dependent on the decision of the Immigration and

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323. Interview Nidos, September 2014.

324. Interview with a lawyer, December 2014.

325. Ibidem.

326. Ibidem.

327. Netherlands Committee of Jurists for Human Rights, 'Dutch Court shows bias in migration rulings', European Liberties Platform: 31 October 2014, available at: <http://www.liberties.eu/en/news/criticism-council-of-state-netherlands>.

328. Goeman, M., Fournier, K. and Arnolds, S., 'A comparative analysis of systems of guardianship', *European Journal of Migration and Law* 16 (2014), p. 501.

Naturalisation Service upon the residence application of a separated child. The views of the guardian are not always taken into account by the immigration authorities. Some respondents have therefore argued that the guardian should be given a more intensive role.<sup>329</sup>

Another limitation for guardians and other actors can be found in the fact that a separated child may not agree with the durable solution that has been determined by others. Furthermore, children may not want to cooperate in the durable solutions procedure, for example when they do not want the parents to be contacted.<sup>330</sup> In this context, it is also relevant to point at the fact that separated children coming from cultures with a strict view on and rules for honour, grew up with the importance of 'family honour' while children in Western Europe grow up with the consciousness of self-development.<sup>331</sup> Many separated children find themselves between these two aspects.<sup>332</sup>

It has also been argued by one of the respondents that the forced return policy could be seen as a barrier for determining and implementing durable solutions in the best interests of a separated child.<sup>333</sup> When there would be more time to negotiate about the possibilities in the country of origin there is a higher chance for a durable solution to be found. The fact that some separated children, according to respondents, do not want to talk about an eventual return to the country of origin can also be considered to be a barrier to the determination and implementation of durable solutions.

The fact that the authorities do not conduct a family tracing before a decision upon the residence application has been made by the Immigration and Naturalisation Service can be seen as another barrier for determining durable solutions in the best interests of the child. When considered safe, family tracing should be conducted as soon as possible and when the family has been found, it should be investigated whether they are capable to raise the child and respect his or her development.<sup>334</sup> The right to development, as laid down in article 6 (2) CRC, explicitly says that the State shall ensure to the maximum extent possible the survival and development of the child. This article should be central when determining durable solutions for separated children.<sup>335</sup>

### **Recommendations:**

- With everything mentioned in chapter 4 and 5 as recommendations:  
Listen to the voice of the child in the durable solution procedure, once this procedure has been established, and take this voice into account when determining durable solutions.
- Create a basis in law to grant a residence permit in case the outcome of the durable solution process shows that in this way the development of the child will not be hampered.

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329. Interview with a judge, April 2015.

330. This issue has been discussed during the focus group with (former) separated children.

331. Interview Nidos, November 2014. See also: Schippers, M., 'Working with the unaccompanied child', CONNECT project, 2014.

332. Interview Nidos, November 2014.

333. Interview IOM, September 2014.

334. Interview with a judge, April 2015.

335. Ibidem.

## 7. Durable solutions in consultation (young people's group)

For this research, a focus group with (former) separated children was organised in order to investigate what durable solutions mean to them, why they think determining durable solutions is important and how they would determine durable solutions for young persons. First of all, it has to be mentioned that the minors participating in this project had never heard about the concept of durable solutions before.

### 7.1. What does 'durable solution' mean to young people?

According to young people, a durable solution means safety and living in a peaceful environment. Furthermore, a durable solution should be a solution for everyone involved and not just for one person. During the focus group, young people indicated that a durable solution is, besides safety and living in a peaceful environment, having a family, being able to go to school and study, and being able to do sports. Young people stated that it is important that they can integrate in Dutch society; otherwise there is no durable solution. Have friends was also seen as an essential element of a durable solution.

When talking about whether reunification with parents is considered to be part of a durable solution, one of the participants indicated that:

*"The best solution for me is a solution in which I can be with my parents."* (A boy, Eritrea)

Young people indicated that they hope to be reunified with their parents in the near future. Thereby, they stated that it does not matter whether this reunification would take place in The Netherlands or in the country of origin, as long as there is safety.

### 7.2. Why do young people think determining a durable solution is important?

Young people think determining durable solutions is important for their future. They indicated that a residence permit as such cannot be seen as a durable solution. Other aspects are important as well. For example, a separated child should also feel at home in The Netherlands.

### 7.3. If young people were determining a durable solution for another young person, how would they do it?

Separated children indicate that it is difficult to determine a durable solution on their own. They argue that determining durable solutions should be seen as a process and that this cannot be done by just one person. Several people and/or organisations should be involved. Separated children indicate they would consult their foster parents and their Nidos guardian when determining durable solutions. Moreover, it was mentioned that it is important to determine a durable solution step by step:

*"Determining durable solutions takes time, you have to determine durable solutions step by step."*  
(A boy, Ivory Coast)

When determining durable solutions, you have to be patient. As a separated child, you never know what your future will look like; you never know your destiny.

When determining durable solutions, the opinion of the child should be considered to be very important because children have their own ideas about their own future:

*"We have our own dreams. Everyone may have their own dreams and goals in life."*  
(A boy, Ivory Coast)

When adults involved in the durable solutions process would have a different opinion than the minor concerned on what kind of solution would be in the best interests of a child, it should be up to the children themselves to decide. In the end, it is their own life and they should decide what to do with it. However, it is important to provide children with information so that they can take well-informed decisions. For example,

when going to school is an important aspect of the durable solution process and a child does not agree with that, they need to understand that going to school is important because otherwise they will not be able to find a job.

### **Contact with parents when determining durable solutions**

According to the young people participating in the focus group, their parents may be contacted when determining durable solutions. However, not that much importance should be given to their opinion on what kind of solution would be a durable solution for their child. The main argument given by young people for this statement is the fact that their parents cannot have an opinion because they know nothing about the situation in which their children find themselves: *“my parents cannot see me, they do not know in what kind of situation I’m in”*. (A boy, Eritrea). Moreover, they indicate that as a person, you have to live your own life and that the parents’ opinion is not that important. One of the participants even indicated that the parents should not be contacted at all:

*“You do not have to call my family in order to be able to determine what will happen to me.”* (A boy, Ivory Coast).

Young people participating in the focus group also pointed at the fact that it is very difficult to determine durable solutions for separated children. Adults may think that reunification with the parents of a child in the country of origin is a durable solution in the best interests of the child. However, this is not always the case since the situation in the country of origin might not be so good that a reunification is in the best interests of the child. There is also a difference in what a child considers to be a durable solution and the reality:

*“At this moment, I would like to go to my parents. But I know that this is not an option.”* (A boy, Eritrea).

*“In the beginning, I wanted to return to my country. But at this moment, I realize that I am better off in The Netherlands.”* (A boy, Angola)<sup>336</sup>

When they had to determine a durable solution for another young person, young people participating at the focus group indicated that they would look for a situation that is the best for the other person. Furthermore, they indicated that it is important to seek a situation in which another person can stay on the right track.

### **Concluding remarks**

For separated children, a durable solution means safety and living in a peaceful environment. Their parents may be contacted when determining durable solutions but their views should not be considered very important. The main argument given by young people for this statement is the fact that their parents cannot have an opinion because they know nothing about the situation in which their children find themselves.

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336. This boy has been living in The Netherlands for several years and was granted a residence permit.

## Conclusion

In The Netherlands, there is no formal and uniform durable solution process during which durable solutions for separated children are determined. However, despite the lack of a formal procedure, different actors are involved in determining durable solutions for separated children. These actors act on their own and do not automatically involve, or negotiate with, other actors. There is no role for the best interests of the child principle during the procedure and interviews with the Immigration and Naturalisation Service and this principle is not incorporated in the decision upon an application for a residence permit of a separated child. There is no individual determination of the interests of a separated child. Thereby, the opinion of the guardian is insufficiently taken into account by the immigration authorities and judges.

Although the State Secretary of Security and Justice has indicated that he pursues durable solutions for separated children to be found as soon as possible and that their guardians play an important role in this respect, this research shows that there is no national policy or law with regard to the determination of durable solutions. The policy and law currently in place can be considered to be one of the main barriers to the determination and implementation of durable solutions for separated children residing in The Netherlands.

## Recommendations

1. Let separated children stay in foster families and other reception facilities when they have turned eighteen, and when no durable solution has been implemented. Provide financial compensation to foster families after a minor has reached the age of eighteen.
2. Register the applications for regular residence permits of separated children.
3. Provide separated children who are not granted a residence permit with a document so that they are able to identify themselves. The card can clearly state that the children do not have a residence permit in The Netherlands but that they do have rights whilst they reside in the country. This way, their rights and social lives will be better protected.
4. Make sure that the new reception shelter that will be opened in 2016 for separated children who need to return to their country of origin will not be a 'mini campus' but a clear improvement in relation to atmosphere, and physical and emotional safety.
5. Develop a legal framework and guidelines for placement of (potential) victims of trafficking in a protected reception facility, and develop a complain mechanism for separated children residing in the protected reception facilities.
6. Guarantee procedural safeguards for children disappearing from care facilities.
7. Abolish the distinction in policy and law between separated children with and without a nationality of a Member State of the European Union when it comes to the determination of durable solutions in the best interests of the child.
8. Create a residence procedure especially designed for separated children who are victims of trafficking, taking their best interests into account.
9. Evaluate the revision of the policy for separated children.
10. Let guardians trace family members, especially the parents, in an early stage but he or she should always first investigate whether family tracing is safe for the children and their family members. Separated children should, in accordance with the CRC, be reunified with their parents as soon as possible unless this is not in their best interests.
11. Conduct an individual family assessment in the countries of origin before returning separated children to their parents/family members. The family assessment carried out by Nidos before separated children will be transferred to family members residing in another Member State of the European Union, could be taken as an example.
12. Evaluate the situation of returned separated children and improve national law and policy with this knowledge.
13. Develop an integration vision for separated children who have been granted a residence permit.
14. The best interests of the child should be better enshrined in the policy with regard to separated children. The way in which the best interests of the child is assessed and balanced against other interests must be written down by the immigration authorities so that it can be controlled and monitored.



15. Introduce a best interests determination procedure that will start as soon as a separated child has arrived in The Netherlands in order to determine a durable solution for this separated child in line with the CRC, General Comment no. 14 and the BIC-model. In this procedure, it should be clear what kind of steps should be taken and by whom. Furthermore, it should be clear who has the final responsibility.

16. Investigate the possibilities to use the BIC-method as a pilot model for a durable solution process in The Netherlands. The theoretical concept of the BIC-model, including the instruments BIC-Q and BIC-S, may be a method for a formal durable solutions process in The Netherlands. In order to determine a durable solution for a separated child, the Study Centre should write a report for every individual child in order to investigate what kind of solution can be considered to be a durable solution in the best interests of the child.

17. The Children's Protection Board writes reports about the situation of a child under their care/guardianship, in these reports the development of a child is taken into account. This should also be done with regard to every separated child applying for a residence permit in The Netherlands, for example by Nidos. The report could be written in combination with the Action Plan Guardianship, that is created together with the separated child.

18. Use child focused country of origin information reports, such as the UNICEF Child Notices as described in paragraph 4.3, in the durable solution process.

19. In the durable solution process, a more important role should be given to the guardian. The opinion of the guardian with regard to what kind of solution can be considered to be a durable solution in the best interests of the child should be taken into account by the Immigration and Naturalisation Service and by the Courts when deciding upon the application for a residence permit of a separated child. However, all guardians should be trained to make these kinds of decisions.

20. Create a basis in law to grant a residence permit in case the outcome of the durable solution process shows that in this way the development of the child will not be hampered.

21. Listen to the voice of the child in the durable solution procedure, once this procedure has been established, and take this voice into account when determining durable solutions.

14. Conduct an individual family assessment in the countries of origin before returning separated children to their parents/family members. The family assessment carried out by Nidos before separated children will be transferred to family members residing in another Member State of the European Union, could be taken as an example.

15. Evaluate the situation of returned separated children and improve national law and policy with this knowledge.

16. Let guardians trace family members, especially the parents, in an early stage but he or she should always first investigate whether family tracing is safe for the children and their family members. Separated children should, in accordance with the CRC, be reunified with their parents as soon as possible unless this is not in their best interests.

17. The Children's Protection Board writes reports about the situation of a child under their care/guardianship, in these reports the development of a child is taken into account. This should also be done with regard to every separated child applying for a residence permit in The Netherlands, for example by Nidos. The report could be written in combination with the Action Plan Guardianship, that is created together with the separated child.

18. Use child focused country of origin information reports, such as the UNICEF Child Notices as described in paragraph 4.3, in the durable solution process.
19. Evaluate the revision of the policy for separated children.
20. Develop an integration vision for separated children who have been granted a residence permit.
21. Create a basis in law to grant a residence permit in case the outcome of the durable solution process shows that in this way the development of the child will not be hampered.

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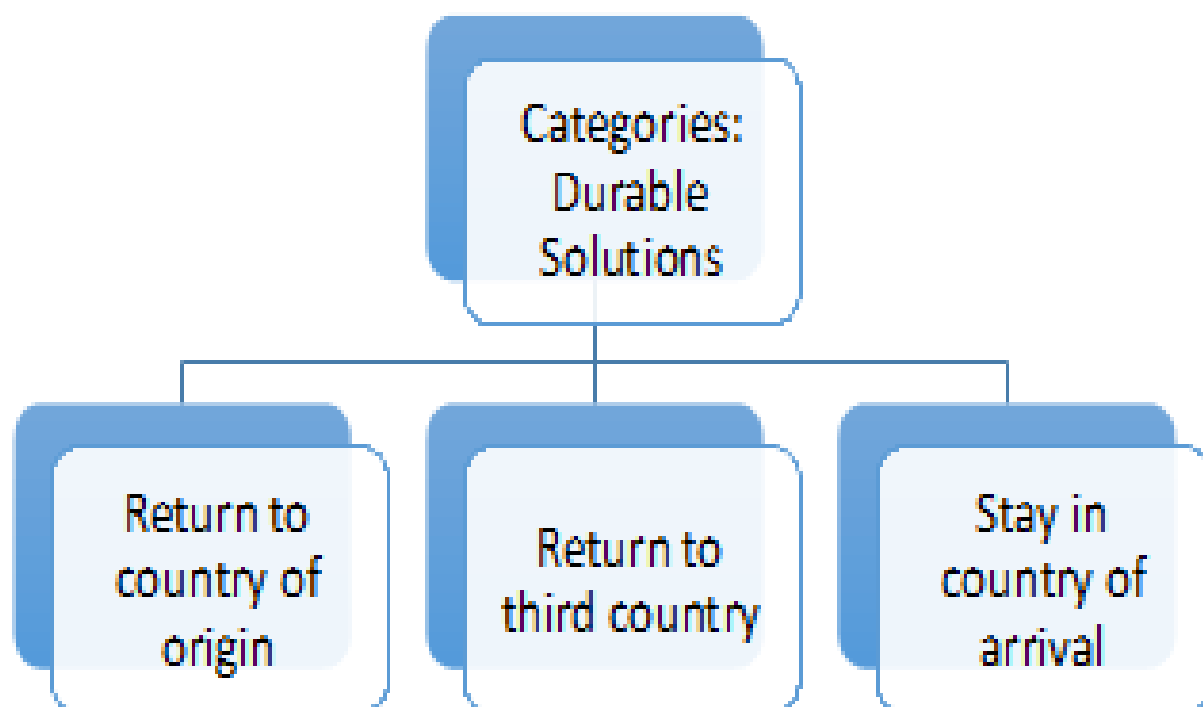
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1. Have you heard of the term 'durable solution' (before this project)? If yes, what does the term mean to you? If no, what do you think it means? (If not answered: what is the time-span of the durable solution?)
2. How have you heard of it (through information provided as part of your work or your own personal interests)?
3. Do you have a role/what is your role in determining and assessing durable solutions, or determining and assessing future plans for separated children? If so: in making decisions about durable solutions or future plans for separated children, what things do you take into account? Is this a formal procedure or is this up to the individual and their way of working?
4. For the purposes of this project, the three main categories under which examples of durable solutions fall are:



Would you agree with these three umbrella categories?

5. Do you consider each of these three 'solutions'/plans in our work with separated children? (Why/Why not?) What would you take into account when planning for each of these three 'solutions'/plans? Who would you talk to/consult with/link with? (If the participant has not already mentioned the child's role in this, ask: what about the child?/how is the child consulted?)

Are you describing the current procedure? Is this different from what you think should be done?  
Is this a formal procedure or is it up to the individual?

6. What do you feel you need to determine a durable solution for an individual child? How do you establish a relationship based on trust with the child and do you think that relationship has an effect on your ability to determine the durable solution?

What else might you need? (For example information about the child's journey, access to reliable information

regarding durable solutions options)

7. How is the best interests of the child determined in this process (the process of determining durable solutions/future plans for the separated child)?

Is this a formal procedure or is it up to the individual?

8. How are other actors involved in the process of making decisions regarding durable solutions? Do you ever encounter differences in views? If so, how do you manage these conflicts/resolve them?

9. How does family tracing and /or family assessment feed into the determination of a durable solution? How is this done, by who and how does it impact the decision (for example, how is this information used – to support the child in determining his best interests and the durable solutions that reflect them or to ‘find a place to return them’)?

Is this a formal procedure or is it up to the individual?

10. Who is involved/who is consulted in the process of determining the best interests of the child when determining durable solutions/future plans for the separated child? And how are they involved/consulted?

Is this a formal procedure or is it up to the individual?

11. At what point do you seek to make decisions regarding the durable solutions/future plans for the child?/ When is the durable solution implemented?

Is this a formal procedure or is it up to the individual?

12. Do you [or have you ever] encounter any limitations/barriers/challenges in implementing durable solutions/future plans?

13. Are durable solution/future plans decisions reviewed? If so, how often? And why might they be reviewed? By whom can a review be asked?

Is this a formal procedure or is it up to the individual?

1. What does a 'durable solution' mean to you?
2. Why do you think determining durable solutions is important?
3. If you were determining a durable solution for another young person, how would you do it?
4. Who should be consulted when determining durable solutions?
5. Should your parents be contacted when determining durable solutions?

