**Asylum Policy:**

**Minors in the Netherlands**

*To what extent is the application of Dutch asylum law for minors consistent with both international and European Union obligations?*

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**Executive summary**

At the end of the nineties, many unaccompanied minor asylum seekers (UMAs) came to the Netherlands due to wars and continuing violence in the world. Many UMAs try to find a new home and ask for asylum in order to get protection. Therefore, the asylum issue has become an urgent item on the political agendas of liberal democratic countries in recent years. The Dutch asylum policy concerning UMAs is thus high on the priority list of politicians. At international en European level, numerous declarations and conventions have been signed, deportation programs have been set up and the debate still continues.

Even though only the Netherlands has special policy concerning UMAs, the assessment procedure in other European Union countries is quite similar. In the beginning of the procedure, it is assessed whether the UMA qualifies for a residence permit or a refugee status. If they do not qualify, the UMA has to return to the country of origin, if adequate shelter and care is available. If there is no adequate shelter and care, the UMA is often granted a residence permit on humanitarian ground. In most countries, UMAs are placed under custody of a guardian. Belgium, Portugal and the United Kingdom do not offer this care. Most countries do have special shelter facilities for minor asylum seekers, although it is not clear whether it is sufficient and adequate.

The United Nations Declaration of the Rights of the Child, the Convention on the Rights of the Child and the European Convention on Human Rights are important tools that ensure protection and care for the vulnerable child. Under these conventions, these young asylum seekers should be allowed to develop adequately. Special provisions are necessary in order to provide these children protection and care. However, the current immigration policy does not fulfil these necessities entirely such as appropriate guidance by a legally adult representative or adequate shelter.

The right to development has not been the primary consideration when making the Dutch immigration policy. As a consequence, the UMA was approached as an alien instead of a minor with right to protection. At present, the 1951 Convention relating to the Status of Refugees determines if an UMA is qualified for a refugee status, however, the final decision-making should be judged on the basis of violation of human rights. In this case, the UMA will be better protected legally and the age of minority can be taken into account which will stimulate the development of UMAs. New Dutch policy concerning UMAs should emphasize the best interests and development of the child. The Child Asylum Law 2012 should provide clarity on the future of the UMAs who are already living in the Netherlands for five years or longer and now are ‘rooted’. This is a positive development, in line with the conventions and declarations, which will protect the best interests of the child. In addition, the Netherlands, adopted the Children’s pardon 2013 which will grant many UMAs who have been living in the Netherlands for numerous years, a residence permit if they meet all of the necessary criteria.

Jurisprudence shows that asylum procedures include a long period of time which is shown in the Taida-case and that the focus has to shift from executing legal procedures to the best interests of the child. The Mauro-case demonstrates that ‘rooting’ has become a significant aspect of criteria concerning UMAs. A more human approach should be applied according to the United Nations Declaration for the Rights of the Child, the Convention on the Rights of the Child and the European Convention on Human Rights.

In the future, it would be desirable to see the organisations involved in shelter facilitations and behavioural scientists to work together more closely. The focus of the asylum procedure concerning UMAs should shift from legally lawful procedures to the best interests of the child and it should not take too long, otherwise the UMA will already be ‘rooted’ in the Netherlands.

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# Abbreviations used

UMA Unaccompanied minor asylum seeker

CBP *College Bescherming Persoonsgegevens*

Institution concerning the protection of data

COA *Centraal Orgaan Opvang Asielzoekers*

Central organisation for the care of asylum seekers

CRC Convention on the Rights of the Child

EU European Union

IND *Immigratie- en Naturalisatiedienst*

Immigration and Naturalisation Service

UK United Kingdom

UN United Nations

US United States of America

UNHCR Office of the United Nations High Commissioner for Refugees

VWO *Voorbereidend Wetenschappelijk Onderwijs*

Highest educational level in secondary education in the Netherlands

# Preface

In order to complete my Bachelor studies of European Studies at The Hague University of Applied Sciences, this thesis on asylum policy concerning minors is written. The idea of the thesis was developed after the media attention in the Netherlands due to the possible deportation of an Angolan boy Mauro.

My main objective is to contribute in creating a better perspective and process in the working field when it comes to helping minor asylum seekers according to declarations, conventions and laws. Working on this thesis has allowed me as well to discover to what extent Dutch law is consistent with both international and European Union obligations.

I would like to thank my parents for giving me the opportunity to study. Furthermore, I would like to thank my supervisor and friends for their infinite patience and support.

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Naomi Sarijoen

# Introduction

Recently, several cases concerning minor asylum seekers such as Mauro from Angola, Sahar from Afghanistan and Taida from Kosovo and many more, have made it clear that the asylum process is an issue that cannot be solved easily. European Union (EU) Member States citizens have access to asylum, although restricted, and the Member States have to keep in mind their national constitutions and the United Nations (UN) 1951 Convention relating to the Status of Refugees. These constitutions and international conventions protect and promote human rights; also specifically concerning asylum seekers. Former Minister Gerd Leers for Immigration, Integration and Asylum Policy stated that the goal is to reduce migration in the Netherlands. However, due to wars and continuing violence in the world, it is more likely that migration will increase. Therefore, the asylum issue has become an urgent item on the political agendas of liberal democratic countries in recent years. This thesis explores Dutch policy and laws concerning minors in the Netherlands. Current Dutch policy and procedures will be analysed in order to compare it with international and European Union obligations.

## Central question and sub questions

In general, EU Member States have to protect and promote human rights. Frequently, due to the flow of unaccompanied minor asylum seekers, special policy needs to be further optimized in order to protect their rights. This thesis tries to find out to what extent Dutch law is consistent with international and European conventions, laws and Dutch jurisprudence. Therefore, the following central question is:

“To what extent is the application of Dutch asylum law for minors consistent with both international and European Union obligations?

The following sub questions, in order to find an answer to the central question are:

Who are unaccompanied minor asylum seekers?

What is the current asylum policy in the Netherlands concerning unaccompanied minor asylum seekers?

What is the current asylum policy in other EU-countries concerning unaccompanied minor asylum seekers?

What are the international and European discussions and policies concerning unaccompanied minor asylum seekers?

In what way does Dutch legislation addresses rights of unaccompanied minor asylum seekers?

To what extent will the Children’s pardon 2013 be legally and morally sufficient?

## Justification of research methods

This thesis is the result of extensive desk research of international and European treaties, reports by governmental organisations such as the Ministry of the Interior and Kingdom Relations, reports by Dutch NGOs, Dutch jurisprudence and several Internet sources. Through desk research data has been collected in order to define the situations in which the subject of Dutch policy concerning unaccompanied minor asylum seekers is researched. Documents, books and reports relevant to this research were written and published by international, European and/or governmental organisations. Internet has been used all throughout the process of this research including declarations and conventions of the UN and the EU. Therefore, it is assumed that sources used for gathering information are reliable.

The first chapter outlines unaccompanied minor asylum seekers and explains which difficulties occur in the Netherlands. Furthermore, it elaborates on current asylum policy in the Netherlands and other EU-countries. The second chapter discusses relevant international en European conventions, programs and developments. The third chapter discusses the Children’s pardon and other Dutch policy and legislation. Moreover, it examines the efficiency of processing (individual) cases. The fourth chapter highlights two significant cases in the Netherlands. Both cases show difficulties, gaps in the asylum policy and individual solutions for minor asylum seekers. The conclusion gives recommendations concerning Dutch policy and emphasizes the main focus on the best interests of the child during asylum procedures.

# Chapter 1 - Minor asylum seekers in the Netherlands

## 1.1 Refugees and asylum seekers

All over the world, millions of men, women and children are forced to seek refuge in other countries due to the unstable situation in their own country. There are several difficult situations such as countries where there are wars which have been going on for decades (i.e. Afghanistan, Iraq, Sierra Leone, Somalia, Sri Lanka); countries with political instability and suppression (i.e. Armenia, Guinea, Iran); countries where the economy is growing, however, human rights are being neglected (i.e. China); countries where persons are being forced to go to endless military service (i.e. Eritrea) and so on. In the beginning of 2012, there were globally 10.4 million refugees. In total, 39% are from Asia, 34% are from the rest of Africa and 17% are from the Middle-East and Northern Africa. 6% of the refugees are from Europe. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), the largest part of refugees finds shelter in their own region and countries nearby. A few of them try to find protection in Europe. 77% of the refugees all over the world are being sheltered in Africa and Asia. Approximately 15% of the refugees find shelter in Europe. The Netherlands is number 20 on the list of countries who give shelter to refugees (Dutch Council for Refugees, 2012).

Nowadays, due to high technology, advanced transportation and communication means, distance is not a problem anymore, which means that countries are easily connected and will increase transport of goods and movement of persons. Unfortunately, refugees are often forced to move to a safer surrounding due to several situations, which generally includes violation of basic human rights. Naturally, refugees have a right to a fair asylum procedure. Moreover, they are entitled to have access to adequate housing, health care, education and work (UNHCR, 2010). These rights are documented in the UN Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees and Protocol 1967, the Convention on the Rights of the Child and the European Convention on Human Rights, which will be further elaborated on in chapter two.

Refugees who arrive in the Netherlands ask for asylum. The term refugee now changes into the term asylum seeker, which is someone who seeks protection from another country. That person asks for asylum and will have an interview with the Immigration and Naturalisation Service (IND). After the interview, the IND will decide whether the asylum seeker has a right to seek protection in the Netherlands and has access to the asylum procedure. Generally, if the information, given by the asylum seeker, is correct and complete, a residence permit is granted. However, if incomplete or inaccurate data is given, the residence permit can be denied or revoked. The alien usually files for appeal at the court. The judge will require an explanation of the procedure that has been followed by the IND. If the alien does not agree with the verdict of the judge, the alien can file for higher appeal at the Council of State. If the Council of State judges that the IND acted legally right, as the last remedy, the alien can go to the European Court of Human Rights. This Court receives numerous cases, which can take a period of time before a verdict is ordered (de Rechtspraak, n.d.). Therefore, all of the procedures take a long time before a final decision has been made. In practice, this decision can take up to years of waiting. For asylum seekers, this is an extremely difficult period filled with uncertainty and loneliness due to limited contact with society. Most of them were exposed to violence, hunger, poverty and fear. They left their country of origin, their friends and family and have to adapt into a completely new culture. These situations can cause a lot of stress and negatively influence the development and perspective for the future of the asylum seeker. The issue is global and affects many countries in different ways. This thesis will focus on unaccompanied minor asylum seekers in the Netherlands.

## 1.2 Criteria unaccompanied minor asylum seekers

An UMA (an acronym for Unaccompanied Minor Asylum seeker) is a person, younger than eighteen years, without parents or guidance of a legally adult representative, who is asking for asylum or by now obtained a permit of residence. Children are very vulnerable and need extra protection. That is why there is special policy for minor asylum seekers in the Netherlands. In general, these UMAs will have the same procedure as other adult asylum seekers. However, if their application gets rejected, it is possible to stay in the Netherlands until the age of eighteen. According to Dutch policy, UMAs will be granted a permit until they turn eighteen. Each year, this permit has to be prolonged. The Netherlands is obliged to protect the rights of the child and has to provide adequate care until the UMA reaches the age of majority and can take care of him- or herself (Rijksoverheid, n.d.). The first articles of the Convention on the Rights of the Child state that every child (every person younger than eighteen, Art. 1) should be protected by State parties against any form of discrimination. Moreover, the best interests of the child should be the primary consideration and if parents or any other legally adult representative cannot fulfil their obligations, State parties should provide adequate care (UNICEF, 2009)

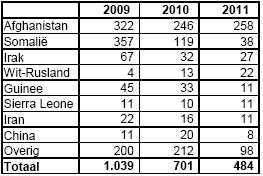
A report made by the Dutch Council for Refugees (2012) with statistics on refugees and asylum seekers in the Netherlands, shows how many UMAs asked for asylum per year, since 1996 until 2011. On the chart below, the blue line indicates the absolute number of applications for asylum, whereas the purple indicates the percentage of the total amount of applications for asylum.

*Chart 1.2.1 – Applications for asylum of unaccompanied minor asylum seekers (UMAs) per year (absolute numbers and percentages of the total amount of applications)*



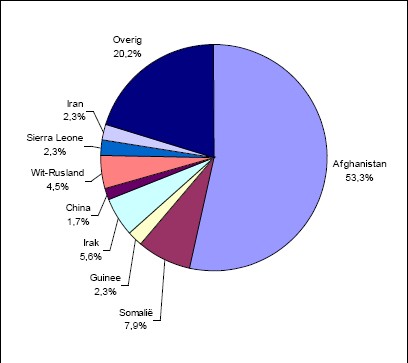
Source: Dutch Council for Refugees, 2012

*Table 1.2.2 - Influx of unaccompanied minor asylum seekers (UMAs) from substantial countries:*



Source: Dutch Council for Refugees, 2012

*Chart 1.2.3 - Amount of applications for asylum of unaccompanied minor asylum seekers (UMAs) from substantial countries in 2010 (absolute numbers):*



Source: Dutch Council for Refugees, 2012

The charts show that in the last fifteen years, there have been severe changes in applications for asylum from UMAs. Since 1996, there has been a significant growth. In 2000, the amount of applications for asylum of UMAs is the highest: 6705 applications. In the years 2000-2002, the amount of applications for asylum of UMAs are relatively high compared to the total amount of applications for asylum: relatively 15.4%, 18.2% and 17.3%, due to the fact that the total amount of applications for asylum strongly decreases in comparison with applications of UMAs. In 2003, a significant decrease is shown on the chart, both in absolute numbers as well in percentages of the total amount of applications for asylum. The reasons for this decrease are the positive changes of situations in the country where many UMAs are from. The applications for asylum from countries such as Angola, Guinea and Sierra Leone diminished in two years’ time from 3387 in 2001 to 282 in 2003 due to the fact that civil wars have ended. The decrease of the amount of applications for asylum of UMAs continues until 2006, where less than 3% of the applications are from UMAs. After that period, the amount of applications and UMAs increases again. In the period of 2008-2009, the amount of UMAs from Afghanistan and Somalia increases extremely, whereas the amount of Iraqi UMAs decreases from 184 to 67. In 2011, the amount of UMAs from Somalia takes up only 11% compared to 2009. More than 50% of the UMAs in 2011 are from Afghanistan (Dutch Council for Refugees, 2012).

Difficult positions of UMAs waiting for the important decision of granting or denying asylum are more often shown in the media. Recent cases of Mauro and Taida will be further elaborated on in chapter four. Many other UMAs will follow their unique position. Therefore, structural improvements are necessary.

## 1.3 Asylum policy concerning minors in the Netherlands

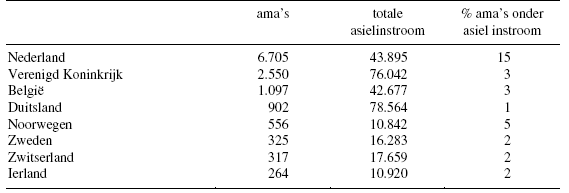
Since September 1992, special policy for UMAs came into effect. The UN Declaration of the Rights of the Child, the guidelines of the UNHCR for policy and procedures concerning UMAs, and the resolution of the Council of Europe of the EU on the position of UMAs were all important in order to function as an assessment framework. In the years before 2001, the asylum policy concerning UMAs operates commonly such as the general asylum policy, however, a view aspects differ when it comes to the age of minority of the asylum seeker. Both UMAs and adults will be classified, which means if they are legitimate refugees and are able to obtain a residence permit due to humanitarian reasons or if they will be rejected. If UMAs are legitimate refugees, they are allowed to special shelter- and education facilitation. If UMAs are not classified as legitimate refugees, they will have to return to the country of origin, but only if there are adequate shelter regions to guide the UMAs. In this case, UMAs can get a permit of residence until they reach the age of eighteen years. In the Netherlands, the UMA will receive guidance from a legally adult representative as quickly as possible. The guardian will not help the UMA daily, but will provide in the care and education of the UMA conform the abilities of the UMA (VluchtelingenWerk Nederland, 2013). When the UMA is old enough and can take care of him- or herself, the UMA has to return to the country of origin. Each year, the UMA has to prolong this permit. According to the Government of the Netherlands, this permit will be abolished mid-2013, in order to be more efficient and clear about the future of the UMA: staying or returning to the country of origin (Rijksoverheid, n.d.). Subsequently, a central organisation for the care of asylum seekers, the COA (*Centraal Orgaan Opvang Asielzoekers*) will provide shelter. Later on in the asylum procedure, a foundation ‘*Stichting Nidos’* will take the responsibility to give daily care, which will be performed by contracting partners (Immigratie- en Naturalisatiedienst, n.d.). The intention is to provide all UMAs a foster home, however, in practice; this seems to be impossible for many UMAs.

It has been said that an abuse of the asylum policy for UMAs occurs frequently: adult asylum seekers pretend to be underage and the attraction of many more asylum seekers due to the special policy for UMAs. This abuse causes problems such as overfull shelter facilities and stricter policies. The policy has been modified in the last years. The enhancements were measures to deal with the abuse of the policy, handling asylum applications more efficiently, the deportation to the country of origin as one of the first options and a better connection between shelter facilities and the perspectives of UMAs.

## 1.4 Asylum policy concerning minors in other EU-countries

Most countries in Europe do not register UMAs accurately or register in a different manner than the Netherlands. A report of the Ministry of Foreign Affairs and the Ministry of Justice states that especially the Netherlands had to deal with significant influxes of UMAs (Ministerie van Veiligheid en Justitie, 2001). On table 1.4.1, an overview is shown of UMAs flowing in several EU-countries. The information shown on the table is merely an indication of reality due to the fact that data are very limited and the information per country is not comparable to other countries since there are large differences in definition and registration. This table shows that in 2000, the number of UMAs in the Netherlands is relatively high.

*Table 1.4.1 – Influx of unaccompanied minor asylum seekers (UMAs) in several EU-countries:*



Source: Immigration and Naturalisation Service (IND), 2000

### 1.4.1 UMA-policy

The Netherlands is the only country with special policy for UMAs. In other European countries, the policy concerning adult asylum seekers is the same for UMAs, however, in the asylum procedures, there are special rules concerning UMAs. In Austria and Denmark, within the policy for adults, exceptions are made for minors without guidance. In Germany, policy can differ between federal states. In the United Kingdom (UK) and in Ireland, UMAs fall under the Children’s Act and in Ireland also partially under the Refugee Act. This act applies to all children in that country, despite their legal status. In addition, priority is given to their applications and they obtain temporarily access to the country for a month. In Italy, there is no special policy for UMAs, due to the fact that the amount of UMAs is small. However, in the immigration policy is documented that UMAs are directly being sent to juvenile court. Moreover, the ‘degree of maturity’ will be taken into account by the evaluation commission. (Olde Monnikhof & van den Tillaart, 2003).

### 1.4.2 When is the minor asylum seeker unaccompanied?

In the Netherlands, the definition of un unaccompanied minor asylum seeker according to the policy is when the person is younger than eighteen years and not accompanied by one or both parents, an adult family member, an adult spouse or another legally authorised adult representative. This description is generally used in other countries, however, some countries do not have a legal definition for UMAs or the definition is broader. In Austria, there is no legal term for UMAs. They are defined unaccompanied when they are younger than nineteen years and are separated from both parents. In addition, they are not being taken care of by an adult with legal competence. In Denmark, the definition of unaccompanied asylum seekers is when minors enter Denmark without any guidance of a legal representative. In France and Germany, UMAs accompanied by an adult brother or sister are qualified unaccompanied, unless they have legal custody. In Greece, there is no legal definition for UMAs, however, there is a definition for ‘separated children’: “*children under* *18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver”* (Separated Children in Europe Programme, 2010)*.* In Luxembourg and Portugal, the definition is broader: the minor is unaccompanied if the person is not being accompanied by close family (Olde Monnikhof & van den Tillaart, 2003).

### 1.4.3 Age of majority

In most countries, eighteen years is the limit for the age of majority. However, in Luxembourg and some federal states of Germany, sixteen years is the limit. When, in Germany, the UMA turns seventeen, it also means obtaining the adult status; nonetheless, the UMA is still considered a minor. In Austria, the age of majority and legal competence of the asylum seeker depends on the legal provisions of the country of origin. In practice, this means that children, who turn eighteen, are treated as adults. Subsequently, they will have to leave the facility centre. In Ireland, the UMA will be treated as an adult when reaching the age of majority, however, the age of minority when applying for asylum will be taken into account. In Portugal, the limit is eighteen years; however, UMAs who are sixteen or seventeen years old will be treated as adults due to doubts about the accuracy of their statements about their age. Conversely, an age examination is not performed. In the UK, twenty-one is the limit for the age of majority. In Sweden, nineteen years is the limit and if the minor has a spouse or children, care and custody are not arranged for (Olde Monnikhof & van den Tillaart, 2003).

### 1.4.4 Return and adequate shelter facilitation

In Austria, UMAs are treated as adults. Therefore, if they receive a negative decision on their asylum application, they have to be deported. However, when the UMA is younger than sixteen years, the UMA can only be deported if immediate shelter and care are available, which suits their surroundings and lifestyle. In many countries, UMAs cannot be sent back to the country of origin if there is not adequate shelter facilitation available. There is no general definition for adequate or sufficient shelter facilities. In almost every country, the UMA has to return if the parents are traced in the country of origin. In Denmark, shelter provided by close family is defined as adequate shelter; however, there are few activities to search for family. In Greece, the International Social Service helps finding lost family members. If family cannot be found, children will be sent to other Greek institutions. In Sweden, the UMA can be deported if the parents or other family members in the country of origin are traced and are informed. Moreover, mental support should be available at the shelter facilities. Furthermore, international organisations should be called on for a ‘family support program’. Many countries send UMAs back if they already obtained a permit of residence in another country (Olde Monnikhof & van den Tillaart, 2003).

### 1.4.5 Consequences when reaching age of majority

In the Netherlands, if the application for asylum is rejected during the age of minority, the UMAs have to leave the country when reaching the age of majority. This procedure is used similarly in other countries. If UMAs are still in the middle of the procedure when they reach the age of majority, they will fall under the regular procedure for adults; therefore, there are no special rules and provisions. Nonetheless, in Ireland, it will be held into account that the UMA was still a minor when filing the application for asylum. In Germany, when the application for asylum is rejected, the UMA has to be deported according to the law, however; in practice, this does not occur. As well in Italy, when reaching the age of majority, usually the UMA can stay. In Sweden, if a decision on the application for asylum still has not been made, the UMA will be registered again and treated as an adult. In the Netherlands, the use of the concept ‘independent living’ was introduced in January 2001. This criterion has since then been used as a strict aspect of the UMA policy, compared to other EU-countries. In Austria, Belgium and Germany, UMAs of sixteen years and older are considered able to live independently in their country of origin, however, it is not clear if UMAs actually return to the country of origin (Olde Monnikhof & van den Tillaart, 2003).

### 1.4.6 Obligatory education

In many countries, UMAs are obligated to go to school. In Austria, UMAs fall under obligatory education, however, it is unclear if they actually get education. There are schools available at the shelter facilities where German is given. In Belgium, UMAs are obligated to go to school until the age of eighteen years, though, there are no check-ups and sometimes UMAs get rejected by schools. In Denmark, obligatory education does not apply to UMAs. In France, UMAs are obligated to go to school until the age of sixteen years and in Germany, children until the age of sixteen can go to school if they have the status of refugee. Local authorities are responsible and there are massive differences between federal states. In Portugal, UMAs are obligated to go to school until the age of fourteen years, but only if UMAs have access to the asylum procedure and obtained a temporary residence permit. Greece provides prep schooling or complementary Greek language schooling; however, it is not clear if obligatory education applies to UMAs (Olde Monnikhof & van den Tillaart, 2003). Many countries provide language education; however, the organisation can be problematic due to, for example, a deficiency of teachers and the lack of collaboration between teaching institutions. According to guardians, many UMAs are motivated when they begin their education, due to amelioration in the personal situation or because the UMA was granted a permanent status. On the other hand, UMAs that have come to the Netherlands at a relatively old age and who still live in a refugee centre, lack the motivation and have mediocre achievements. Therefore, it can be said that the uncertainty about their status influences the school career negatively (Dullaert, 2012).

### 1.4.7 Measurements against abuse

In order to prevent abuse of the UMA policy, two types of measurements are taken in the Netherlands: measurements to prevent human trafficking and medical examination when in doubt if the person is a minor. This is often medical and executed by experts, for example, by examining bone and teeth structure. In Austria, it is prohibited to make x-ray photos of wrists for the use of age examination. In practice, age examination is performed via an ‘inspection of a public health officer’. However, the content of this inspection is unknown. In Denmark, age examination is used on a very limited scale. In France, UMAs frequently are researched by bone and teeth examination while they are being held in the ‘waiting zones’. Germany had a non-medical age examination. The UMA will then be judged by looking at the appearance (*Inaugenscheinnahme)*. A judge decided that the non-medical age examination should be abolished due to discussions on the reliability of the examination and the ethical and legal objections. In Greece, the UMAs usually get the benefit of the doubt due to the fact that there is a small number of UMAs entering the country. In Italy, when in doubt, the age examination can only be executed with the approval of the Tribunal for Minors. In Luxembourg, the age given by the minor will be used (Olde Monnikhof & van den Tillaart, 2003).

In the overview, several aspects of policy concerning UMAs are accentuated. This in order to compare the Dutch UMA policy with policy of other EU-countries such as Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, the UK and Sweden. The results of the other EU-countries can be found in the List of Appendices.

*Overview 1 – Policy concerning UMAs in the Netherlands\**

1. Is there special policy for UMAs? yes
2. Concept policy - refusal asylum application: return to country of origin if adequate shelter facilities available

* - during stay in the NL: custody and shelter will be provided

1. On which level national
2. Definition ‘unaccompanied’ not accompanied by:

- one or both parents;

- adult family member;

- adult spouse;

- other legal adult representative

1. Definition ‘minor’ younger than 18
2. Definition ‘adequate shelter’ every shelter similarly to peers in comparable situations
3. Definition ‘independent - 16 years

living’ - UMA took care of him-/herself before coming to NL

1. Obligatory education until 16 years, partially until 18 years
2. Special/customised education yes, international interchanging classes
3. Consequences when reaching age of - 1. < 3 years positive UMA-status: return

majority - 2. > 3 years positive UMA-status: permit on humanitarian grounds

1. Return policy yes
2. Content return policy if application for asylum is denied, the UMA has the responsibility to return back, in case the negative decision is confirmed in juridical procedures. If not cooperative, the UMA will be deported.
3. Measurements against abuse - measurements to prevent human trafficking (pre- boarding checks, gate-controls)

- medical examination: uncertainty minority age

*\* A comparison with other EU-countries is shown in matrix 1 of Appendices*

## Conclusion

Unaccompanied minor asylum seekers (UMAs) are persons younger than eighteen years who – without guidance of a legal adult representative – seek asylum in another country or region; this includes also those who recently obtained a permit of residence. UMAs fall under special policy which provides extra care and protection. They can stay in the Netherlands if there is no adequate shelter facilitation in the country of origin. The Netherlands are unique in expressing an explicit

policy on UMAs. The other EU-countries go by the regular asylum policy for adults added with rules of exception and special provisions for minor asylum seekers, due to the limited influx of UMAs. In most countries, UMAs have to return to the country of origin if they are not eligible for a refugee or other residence status. However, in all countries, UMAs can stay (or their stay is tolerated) until they reach the age of majority, when there is no adequate shelter facilitation available in the country of origin. The definition of ‘adequate shelter’ can differ per country. Most countries state that the presence of parents or close family is sufficient. In practice, there are insignificant differences in the asylum procedures.

# Chapter 2 – Significant solutions for a global issue

The major increase of migration in the world has become an important issue. The World Migration Report (2010) from the International Organisation for Migration estimated that the number of persons migrating will be 405 million in the next 50 years (Memecan, 2012). This development has been arising for centuries; however, it changes rapidly due to the relatively small distances in the world. This new reality puts migration in a negative perspective and highlights the need for necessary adjustments in civil rights.

The case of Mauro showed that there are significant gaps in human rights laws. Former Minister of Justice, Hirsch Ballin, stated that *“civil rights have become more and more a lever in the immigration policy instead of being the basis for social participation, which was the original purpose”* (H. Ballin, 2011).

This trend is not only visible in Europe, but also in the United States of America, the nation of immigrants. Up until now, President Obama did not succeed in legalizing 11 million illegal immigrants. Even the proposal to grant children of ‘persons without papers’ a permit of residence in exchange of doing studies or military service for the country, is not accepted by the Congress. It is clear that this issue is crossing borders all over the world, even if there are iron gates such as between the US and Mexico and in the Spanish enclaves in Morocco between Europe and Africa (Fitz, 2012). Moreover, this issue shows that many governments have difficulties finding clear and consistent regulations in order to come to efficient and reasonable solutions.

This chapter gives an overview of significant policy documents. Several important declarations, conventions and legal instruments were selected because of their relevance concerning refugees and UMAs. The next chapter will further explain Dutch legislation regarding UMAs.

## 2.1 International law

In the next sections, some examples of important declarations, conventions and regulations on the protection of refugees and/or UMAs will be given.

### 2.1.1 1951 Convention relating to the Status of Refugees and Protocol 1967

The 1951 Convention relating to the Status of Refugees is an international convention that defines who is a refugee, the rights of persons who are granted asylum and the obligations of nations that grant asylum. On 28 July 1951, the Convention was approved at a special UN conference. The treaty came into effect on 22 April 1954. At first, the treaty was limited to provide protection for European refugees after World War II, but the 1967 Protocol removed geographical and temporal restrictions from the Convention. It is often referred to as “the Geneva Convention”, but only because the convention was approved in Geneva.

According to the Convention of Geneva (1951) in Article 1, someone is a refugee if: “*A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*.” (UNHCR, 2010). This treaty is binding upon parties who signed and ratified it and must be executed in good faith. According to the Geneva Convention, Contracting States are responsible for the protection of refugees that are on their territory.

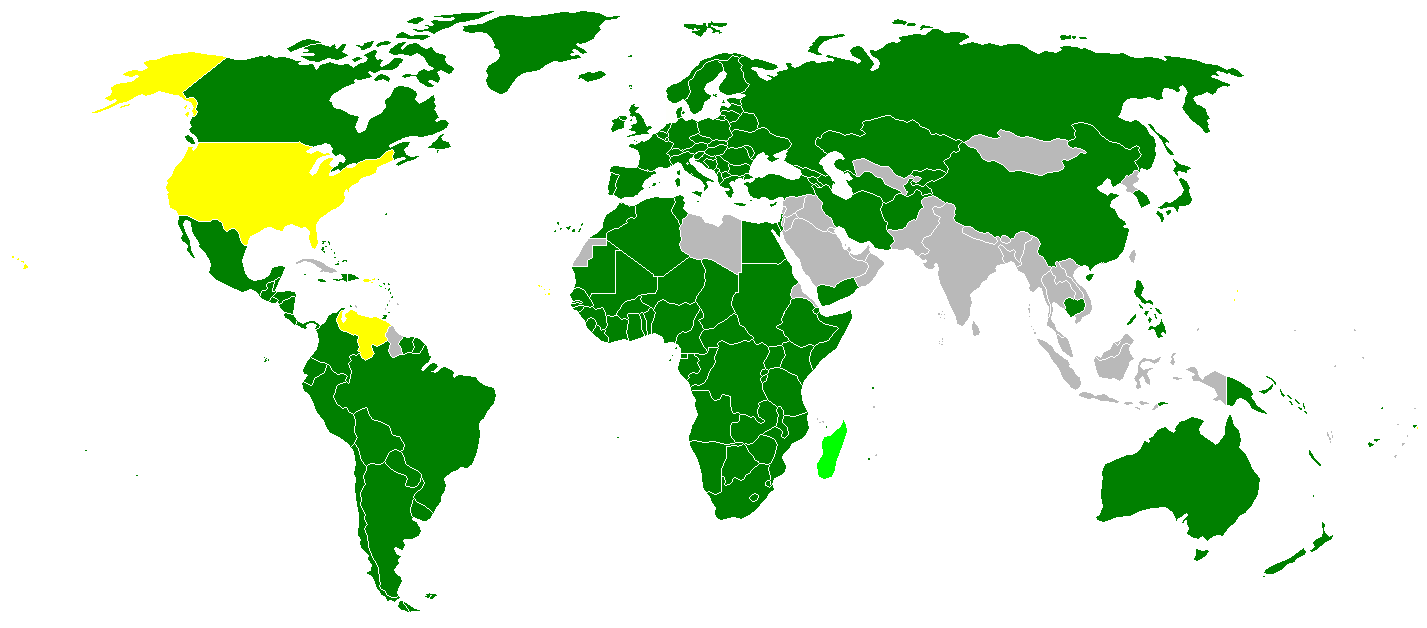
Several significant provisions that Contracting States to the Geneva Convention and Protocol 1967 have to implement are:

* Cooperation with the UNHCR: According to Article 35 of the Refugee Convention and Article II of the Protocol 1967, States must cooperate with the UNHCR in order to perform and to help supervise the implementation of the conditions in the Convention (UNHCR Refugee protection: A Guide to International Refugee Law, 2001). Therefore, Contracting States, such as the Netherlands, are obliged to implement the Convention, which will protect and promote the rights of refugees.
* Information on national legislation: the Contracting States agree to inform the Secretary-General of the UN concerning laws and regulations that have been adopted to ensure the application of the Convention (UNHCR Refugee protection: A Guide to International Refugee Law, 2001). Regular contact with the UN Secretary-General stimulates the Netherlands to review the actual implementation of the Convention in cohesion with the national legislation.
* Exemption from reciprocity: “*Where, according to a country’s law, the granting of a right to an alien is subject to the granting of similar treatment by the alien’s country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity does not apply to refugees since they do not enjoy the protection of their home country.”* (UNHCR Refugee protection: A Guide to International Refugee Law, 2001). This provision ensures refugees to have rights in the country they fled to, since their rights in their home country may have been breached.

In Article 33 of the Geneva Convention, a refugee is protected against forcible return, or refoulement:

*“No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion"* (UNHCR, 2010). The prohibition of forcible return is widely accepted as part of customary international law. Therefore, States that are not party to the Geneva Convention still have to respect the principle of non-refoulement. If the principle is not being followed, the UNHCR can intervene with substantial authorities and inform the public. This means that refugees cannot be deported if the circumstances in the country of origin are still hazardous. The Minister of Alien Affairs and Integration should collect clear data on the current situation in the country of origin of refugees.

*Chart 2.1.1 – Map of initial signatories to the Convention Relating to the Status of Refugees 1951:*



Source: UNHCR, 2007

In the chart, the colour light-green shows signatory parties to only the 1951 Convention. The colour yellow indicates signatories party to only the 1967 Protocol. The colour dark-green demonstrates signatories party to both and the colour grey are non-members.

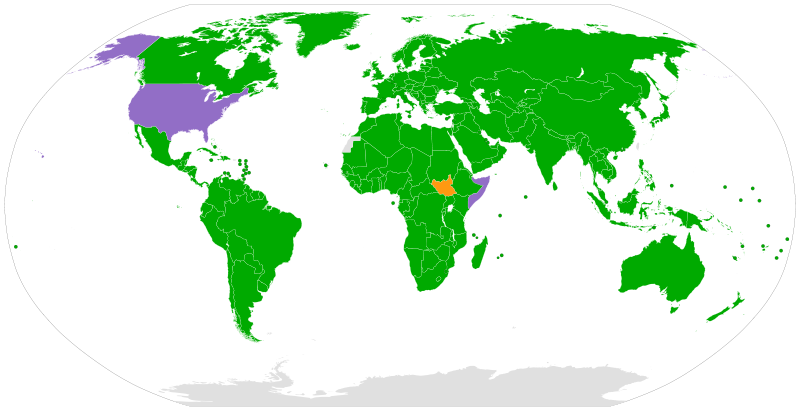
### 2.1.2 Declaration of the Rights of the Child 1959

When it comes to refugees that are children, younger than eighteen years, the Declaration of the Rights of the Child 1959 can be applied. It is the first major international consensus on the fundamental principles of children’s rights. The origin of the Declaration of the Rights of the Child started in 1924, where the League of Nations (LON) adopted the Geneva Declaration. This Declaration documented for the first time the existence of rights to children specifically and the obligations of adults towards them. After the foundation of the UN, the Universal Declaration of Human Rights came into effect in 1948. On November 1959, the Declaration of the Rights of the Child was adopted unanimously by all 78 Member States of the United Nations General Assembly in order to protect children more carefully. The Declaration of the Rights of the Child 1959 mentions that “*Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”* (UN General Assembly, 2003)*. (*See appendices for the Declaration of the Rights of the Child 1959). UMAs live in extremely difficult situations and need special attention and care. Therefore, UMAs can apply to all of the principles: non-discrimination, the principle of “the best interests of the child”, child’s right to adequate housing, nutrition and medical services and child’s right to development and education, respectively Principles 1, 2, 4, 6 and 7 of the Declaration of the Rights of the Child 1959. Overall, these principles are universal and should promote protection and care for the vulnerable UMAs.

### 2.1.3 Convention on the Rights of the Child

In case UMAs do not obtain the status of refugee, the regulations of the Convention on the Rights of the Child can be applied (See appendices for the Convention on the Rights of the Child, CRC). The CRC documents civil, political, economic, social, health and cultural rights of children. Specifically Art. 2 (1) states that “*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”* (UN General Assembly, 2003). The definition of a child according to the CRC is any human being younger than eighteen years, unless the age of majority is attained earlier under the law applicable. On 2 September 1990, 193 ratifying parties are bound to it by international law. The US rejected to sign the Convention. There are four general principles: non-discrimination, devotion to the best interests of the child, child’s right to maximum survival and development and respect for the views of the child, respectively Arts. 2(1), 3(1), 6 and 12 of the Convention. UMAs should benefit from all the rights documented in the Convention. The following Articles are specifically of importance for UMAs: the four general principles; Art. 8 – Preservation of identity; Art. 9 – Separation from parents; Art. 16 – Child’s right to privacy; Art. 19 – Protection from all forms of violence; Art. 20 – Children deprived of their family environment; Art. 22 – Refugee children; Art. 24 – Right to health and health services; Art. 26 – Right to benefit from social security; Art. 27 – Rights to an adequate standard of living; Art. 28 – Right to education; Art. 31 – Child’s right to rest, leisure, play and recreational activities; Art. 37 – Torture, degrading treatment and deprivation of liberty; Art. 39 – Reintegration; Art. 40 – Juvenile justice; and Art. 41 – Respect for existing human rights (UN General Assembly, 2003). Especially, these Articles should protect the rights of UMAs. Since the Netherlands also ratified the Convention, States parties are bound to it by international law. This means that these rights should be enforceable in order to focus on the best interests of the child.

*Chart 2.1.3. States parties to the Convention on the Rights of the Child 1990:*



Source: Wikipedia, 2012

In the chart above, the colour green shows signatories party to only the CRC. The colour purple indicates signatory parties but did not ratify the Convention. The colour orange demonstrates non-signatory parties.

The appliance of the principle “the best interests of a child” is not the only condition to grant or refuse asylum. More factors determine the final judgment:

* The criteria for admission and the asylum policy when entering the country;
* The current immigration- and asylum policy;
* The circumstances that are beyond control of the asylum seeker and have led to an extended stay;
* The insurance of provisions in the country of origin;
* The ‘value’ in the future of the asylum seeker in the current country of residence.

In the current Dutch immigration policy, the value of a migrant for the Netherlands has to be clear. For example, with a study permit or a working permit, UMAs can prove to be able to function well in society and therefore, are eligible for a permanent permit of residence. Another possibility to justify the stay of UMAs in the Netherlands concerns the nuclear family. If an UMA has been part of a (foster) family for a long duration of time, the UMA can be referred to as an alleged ‘de facto family member’. In this situation, the foster parents can sponsor their ‘de facto family member’ until a certain age (Meurrens, 2010). All of these treaties, conventions and measures can make the decision-making process more efficient and clear for all parties involved.

## 2.2 European law

In the next sections, some examples of important conventions and institutions on the protection of human rights and fundamental freedoms will be given.

### 2.2.1 Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was drafted in 1950 on the inspiration of the Universal Declaration of Human Rights. The ECHR is an international treaty to protect human rights and fundamental freedom in Europe. The Council of Europe monitors the enforcement of the ECHR. The ECHR determines a number of fundamental rights and freedoms which are also very important to UMAs: Art. 1 – Right to life; Art. 5 – Right to liberty and security; Art. 6 – Right to a fair trial; Art. 8 – Right to privacy; Art. 11 – Right to association; Art. 13 – Right to effective remedy; Art. 14 – Prohibition of discrimination. More rights are granted by protocols to the Convention (Council of Europe, 2010). Citizens can take a case to the Court if they feel that rights have been violated under the Convention. The European Court of Human Rights in Luxembourg has been established by the Convention in order to judge if States are acting in compliance with the Convention. However, citizens can only go to the Court if all national remedies have been used, since national courts have to comply with the Convention as well. Judgments are binding and the States are obliged to execute them. Several treaties have been set up to put emphasis on the compliance with the Convention by all EU Member States and not only the States of the Council of Europe. The Treaty of Amsterdam (1999) determines the real inception of the asylum and immigration policy: the beginning of a common foreign and security policy (Diop, 2008-2009). The Lisbon Treaty (2009) gives access to the EU which includes specifically the protection of the rights of the child in Art. 2 and Art. 3(5): the Unions shall protect the rights of the child (Wikisource, 2010). The Convention should be used as the only European Constitution to ensure protection of human rights in all of Europe. The Court will judge if parties to a case comply with the Convention and if it is implemented in domestic laws. Citizens, including children, are provided with many legal remedies in order to protect their rights and fundamental freedoms.

## Conclusion

It is clear that migration and the influx of UMAs all over the world affect many countries, governments and international organisations. Therefore, there has to be consistency in the process of the asylum procedures. However, it is not simple to document important laws and regulations at once, since there are also policies on national level. Documents of international organisations such as the UN, the EU and many others, demonstrate the developments and importance of law-making to encourage implementing law. International cooperation is extremely significant, which stimulates exchanging information and best practices. Many years of developing laws have resulted in the improved focus on the best interests of a child and to a more human approach. Children are vulnerable and need extra care and protection, especially when they suffered massive violation of their human rights. States parties to conventions and treaties are obliged to ensure that children’s rights are being respected. Unfortunately, in practice, there still seems to be a deficiency of law-making and coherence between countries when it comes to respecting the rights of the child.

# Chapter 3 – Dutch legislation

In the previous chapter, it was explained which international and European Union obligations are applicable to UMAs in order to protect their rights and fundamental freedoms. In this chapter, the Dutch legislation concerning UMAs will be explored.

In the Dutch legislation, the processes of asylum applications under the Aliens Act 2000 took too long due to series of procedures pursuit by asylum seekers. Many UMAs are waiting years for their final judgment, frequently more than five years and even more. This situation influences the child’s development negatively. There have been many changes in the last years in order to reduce the procedures and to stimulate refoulement (return). Refoulement programs have been set up with the aim of transferring aliens to the Repatriation and Departure Service if the asylum application is rejected. This will prepare the aliens in returning to the country of origin. In 2010, a new policy concerning UMAs came into effect and former Minister Leers announced new regulations: ‘B*eleidsvisie Stroomlijning toelatingsprocedure en de herijking van het amv-beleid’.* These regulations ensure that new applications for asylum will be processed more rapidly. In addition, the government attempts to reduce the amount of repeated applications. Furthermore, the government strongly emphasises on the rapid refoulement to the country of origin by providing refoulement-programs in combination with monetary support. Efficient and clear procedures are in the interest of the child; however, these procedures should be executed cautiously and with sufficient attention to the best interests of the child. Despite the regulations, there will continuously be cases which take a longer period of time. In order to give the alien clarity rapidly, the case will be prioritised if possible. These new procedures will not protect UMAs who fall under the old policy before July 2010. For this group, there is no policy and no solution (Europees Migratienetwerk, 2012).

UMAs, who ask for asylum in the Netherlands, will get a medical check in the first weeks. This check will be performed by an independent medical office, but will generally only concern the status of physical health of the child. Therefore, there is no knowledge on the mental health of the child, while the child may have experienced horrible situations. After this check, there are no further (medical) check-ups from the government. In the various shelter facilities, medical aid is available. If needed, further care of a psychologist, a therapist or special youth care can be appointed. However, this care is for the short term instead of gathering information concerning the procedure. The professional judgment of the caretakers will not be registered at the IND or used in the judgment of the asylum application. Employees of the COA and other shelter facilities can send information to the IND when a specific case needs special attention. However, these employees do not have specific instructions and the expertise to discover and judge all problems. The expertise on the well-being and the interests of the child is lacking, whereas the Council of Child Protection will be taken into account as researcher and advisor when it comes to decisions concerning children such as a divorce or conviction. In the family justice and juvenile justice, there is explicitly attention for the interest of the child, however, in the rights for aliens this is not the case while in these situations the interests of the child will be affected intensely. In the current asylum procedure, reports on the mental and psychical health of a child by experts can only be enabled by the application of a legally adult representative. Without these reports, nothing is known on the development and health state of the child. In cases concerning UMAs, the best interest of the child should be the primary consideration. Individual circumstances make it difficult to find general solutions; therefore, cases should be looked into individually (VluchtelingenWerk Nederland, 2013).

International and national scientific research states that children have high risks of getting damaged due to long procedures. Consequently, children can connect with the culture and lifestyle in the Netherlands and therefore, form their own Dutch identity (Kalverboer & Zijlstra, 2008). In jurisprudence is determined that the connection with a country should be taken into account when coming to a final decision. The case of Sahar indicated that she formed her own Dutch identity and cannot easily adapt to the Afghan culture. Due to the long stay in the Netherlands, the western norms and values became part of her personality. Sahar was ‘westernized’ thus more connected to the Netherlands instead of Afghanistan. In many other cases, the Dutch government does not completely comply with the CRC concerning the best interests of the child (Art. 3 CRC), the maximum possibility of survival and development (Art. 6 CRC) and free expression (Art. 12 CRC). Many UMAs still are sheltered in underprivileged conditions without appropriate assistance whilst awaiting their decision on the granting of a residence permit.

The Dutch government does not have a complete overview of the number of UMAs that are in the Netherlands, due to the lack of registering processes. Also, there is no information on the duration of their stay in the Netherlands, or which damage they have had due to the long procedures and uncertainties. The lack of knowledge on the situation of the UMAs in the Netherlands is in violation of several Articles of the CRC and ECHR: Art. 1 – Right to life; Art. 5 – Right to liberty and security; Art. 6 – Right to a fair trial; Art. 8 – Right to privacy; Art. 11 – Right to association; Art. 13 – Right to effective remedy; Art. 14 – Prohibition of discrimination (Council of Europe, 2010). The Netherlands is obliged to respect those rights and to provide adequate care and protection. Without an overview of the situation, it is impossible to develop new policy which will improve the obligation of the Netherlands to provide sufficient care and protection for the child.

## 3.1 Bill and report

In February 2012, members of the Dutch parliament, Diederik Samson and Joël Voordewind, presented a bill, with reference to the Mauro-asylum case, concerning the residence permit of minor asylum seekers who have been living in the Netherlands for years and now ‘are rooted’. The proposed bill was called the ‘*Kinderasielwet’* (Child Asylum Law), but also was called the ‘*Wortelingswet’* (Rooting Law) or the ‘*Maurowet’* (Mauro Law). The following criteria are:

* The child has applied for asylum and stayed in the Netherlands for more than eight years;
* The child has to be younger than twenty-one and when arrived in the Netherlands younger than ten years;
* The child continuously stayed in the Netherlands (UNICEF, 2012).

This bill can terminate the uncertainty of UMAs that are by now rooted in the Netherlands. On the other hand, this opportunity can be abused by pursuing many procedures in order to prolong the child’s stay.

On 8 March 2012, the children’s Ombudsman Marc Dullaert presented the report “*Wachten op je Toekomst”* (Waiting for your Future), concerning asylum children to former Minister Leers. He addresses the individual and independent assessment of each child on his or her well-being, including the (psychological) damage and rooting. Many children are unaccompanied and had to deal with the horrific situations that occurred in their home country, which makes them more vulnerable. A separate instrument should be developed regarding the assessment and the outcome should weigh in the residence permit procedures. In this manner, the children will be heard and can freely express their feelings and emotions. In addition, the assessment can lead to faster decisions on granting a residence permit or refoulement, which gives the child clarity on the future.

## 3.2 Children’s pardon 2013

For children who have been living in the Netherlands for more than five years and do not have a permit residence, the Dutch government has made a new regulation. State Secretary Fred Teeven of the Ministry of Security and Justice aims with this new settlement to make it possible for UMAs to stay in the Netherlands, if they meet the conditions. The settlement came into effect on 1 February 2013 and is also called ‘*Kinderpardon’*, Children’s pardon.

There will be a settlement of transition for UMAs living in the Netherlands for over five years and also a permanent settlement to prevent future discussions on UMAs and the role of the government. With the permanent settlement and policy, it will be clear if the government should grant a permit on the basis of long stay.

The conditions are:

* The child has to be born after 29 October 1991;
* The child still does not have a residence permit;
* An application for asylum has been made for the child;
* The application for asylum had to be filed before the child was thirteen;
* The child has been living continuously in the Netherlands for five years or longer;
* The child has had continuously contact with the Dutch government or Nidos (institution for guardianship)
* The child has never been in contact with the police;
* The child has not more than once given a false name or nationality;
* The child has not left the EU without notifying the IND;
* All running procedures will be withdrawn if the child obtains a residence permit (Vreemdelingenrecht, 2013).

With this regulation, the rights of the child, who has been living over five years in the Netherlands, are finally being documented in a permanent settlement. Many UMAs will be able to have clearance on their future now.

### 3.2.1Transition settlement

The transition settlement includes, next to the general conditions, several specific conditions. On 29 October 2012, the alien has to be younger than twenty-one. Moreover, it will be possible for certain temporary residence permits, such as a medical or a study permit, to convert into a permanent residence permit based on the settlement. Furthermore, UMAs will have the opportunity to recovery of their identity when there has been doubts concerning the stated identity (MUG Magazine, n.d.).

### 3.2.2 Permanent settlement

For the permanent settlement, the application has to be filed before the alien reaches the age of nineteen. In addition, the alien had to cooperate with the refoulement program and the identity should be clear (MUG Magazine, n.d.).

Teeven promised that he will be generous considering his discretionary competence, for children who do not meet the conditions entirely. Defence for Children will be monitoring his promise closely. After the summer period, Teeven will make an analysis of the amount of applications, grants and rejections of the Children’s pardon. The judge will test if the settlement is in line with the UN Declaration for the Rights of the Child and the verdicts of the European Court for Human Rights.

With these new regulations, many UMAs can have clearance on their future. If they meet the criteria, a residence permit will be granted. If not, the UMAs should cooperate with the refoulement program. These regulations are in compliance with several Articles of the CRC and the ECHR: Art. 1 – Right to life; Art. 5 – Right to liberty and security; Art. 6 – Right to a fair trial; Art. 8 – Right to privacy; Art. 11 – Right to association; Art. 13 – Right to effective remedy (Council of Europe, 2010).

# Chapter 4 – Case Law

Many UMAs live years in uncertainty and may still have no clear perspective on their future. The media has shown recently, cases of children in such situations. This chapter will elaborate on two recent cases in the Netherlands concerning UMAs.

## 4.1 Case: Taida

Taida Pasić (Pristina, 10 April 1987) is a Serbian-Kosovar former UMA in the Netherlands and also former applicant for a temporary study permit. In 2006, the asylum case of Taida became national news in the Netherlands. During her final school exams, she was taken into alien detention in order to await her deportation. Former Minister Rita Verdonk of Immigration and Asylum Affairs decided that she had to return to her family in Kosovo. Taida had to take her final school exams at the Dutch Embassy in Sarajevo. After many lawsuits, Taida managed to obtain a study permit and a sponsor, therefore, Taida was able to study Law at the University of Leiden.

In 1999, the Serbian-Kosovar family Pasić fled from Kosovo to the Netherlands and found shelter at the asylum centre in Winterswijk, the place where Taida went to school. In 2001, their application for asylum was denied and confirmed by the court. In 2004, the IND stated that circumstances in Kosovo were stable and the family could repatriate. Taida wanted to finish her education VWO (*Voorbereidend Wetenschappelijk Onderwijs,* highest educational level in secondary education in the Netherlands); therefore, advice from the IND was asked twice for a possible study permit. The IND gave continuously negative advice, because there would be similar education in Kosovo. According to *Nuffic* (Dutch organisation for international collaboration in higher education), this is not true, due to the fact that the language used at the gymnasium in Kosovo is Albanian, which Taida does not speak. In addition, the diploma will not be accepted in the EU or in the US. The IND advised Taida to consult a lawyer to explore other possibilities. With reference to the Convention on the Rights of the Child, this means that data should be cautiously checked and confirmed in order to act conforming the principle of the best interests of the child (Art. 3, CRC), the right to protection of rights such as educational systems (Art. 4, CRC), the right to survival and development (Art. 6, CRC), the right to education which states specifically that *“young people should be encouraged to reach the highest level of education of which they are capable”* (Art. 28 CRC).

The foundation Dutch Council for Refugees advised the family to cooperate with the upcoming deportation and not file for appeal in order to facilitate the return of Taida to the Netherlands. The family chose to do so, because when losing the continuing procedure, Taida was not allowed in the EU for five years. On 18 January 2005, family Pasić left the Netherlands and received 7000 euros to start a new life in Kosovo. However, the family was not able to register and settle and was forced to stay illegally in Serbia for a period of time, in order to move to Bosnia. In both countries, the family was part of a discriminated minority.

On 7 January 2005, advise from the IND was asked concerning a temporary residence permit. On 7 April 2005, negative advise included that the Netherlands is not the appointed country to do the studies. In June 2005, Taida returned to the Netherlands with a French tourist visa in order to do her transition test for the final class of VWO. This shows that are different (illegal) methods to obtain a different sort of visa and therefore, the law-making should be further optimized. After this, Taida stayed with family in France for several months. On 4 July 2005, another advise was asked from the IND and was again denied on 27 September 2005. In the end of November, she returned to the Netherlands in order to start an admission procedure. In the municipality of Haarlem, she received a stamp in her passport which gave her the right to reside and study in the Netherlands, whilst awaiting the final decision. She stayed in Winterswijk at her foster family’s place conforming Art. 5 CRC, which gives UMAs the right to special care by people who respect their ethnic group and culture when parental guidance is not available.

On 18 January 2006, the IND suddenly decided to take Taida into alien detention while she had class. She had to stay at the deportation centre Zestienhoven in Rotterdam for two weeks. This happened while the standard procedure would have given Taida sufficient time to get her VWO-diploma. This was in breach of Art. 5 ECHR – Right to liberty and security and also Protocol I, Art. 2 ECHR which includes the right not to be denied education. The sudden decision of the IND and the manner in which this occurred, led to intense protests from Taida’s school, her class mates and the town council of Winterswijk. A website to support Taida was set up, a petition was organized and the publicity was sought through protests. Next to the 75.000 endorsements, persons claimed to be willing to (fake) marry Taida in order to let her stay legitimately. This demonstrates that society finds human rights and the best interests of the child more important than legal law procedures.

On 1 February 2006, the Court of The Hague decided that the deprivation of liberty (Art. 5 ECHR – Right to liberty and security) was disproportional and ordered the release of Taida. She received compensation of 1005 euros. Former Minister Verdonk of Immigration Affairs, filed for appeal and on 10 March 2006, the Council of State decided that there were reasonable grounds to suspect that Taida was evading her deportation. An internal investigation conducted by the police concerning the process of taking Taida into immediate detention, indicated that the procedure was legitimate. However, the procedure needed adjustments, due to the fact that consequences of the action were not taken into consideration.

Several days after the verdict of the Court of Amsterdam, a spokesman of the Ministry stated that Taida committed fraud, because she lived in Winterswijk instead of Haarlem and she obtained illegitimately a French tourist visa. For this visa, she paid an intermediary 4000 euros to arrange for the visa. Furthermore, she stayed longer in the Netherlands than was allowed according to her visa. In addition, she claimed that she had destroyed her passport in order to prevent deportation. According to Taida, these cases were already known to the judge. Eventually, Taida was allowed to take her final school exams in Sarajevo. After criticism from the *Tweede Kamer* (Lower House of the Dutch parliament), Verdonk withdrew the term ‘fraud’ (crime) and used the term ‘improper use’ (no crime). The Minister denied the intention to talk unscrupulous about the girl, but wanted to highlight various aspects concerning publishing private data. On 28 May 2006, an investigation of the CBP (*College Bescherming Persoonsgegevens*, institution concerning the protection of data) concluded that the Minister acted careless and unlawful. As a consequence, Taida’s lawyer filed for compensation (Elsevier, 2006).

In contrast with what Verdonk stated, Taida was not illegal. According to Article 8 of the Aliens Act 2000, an alien is legal in the Netherlands, when the alien filed an application for asylum or, in due time, employs a legal remedy and awaits the decision.

On 30 November 2005, Taida filed an application for a temporary study permit with the aim of finishing her VWO-education. On 12 January 2006, the Minister rejected the application, which meant that Taida had to leave the Netherlands within 24 hours. Taida objected to the rejection and filed an application for permission to stay in the Netherlands during the procedures. On 3 February 2006, the Aliens Chamber of the Court of The Hague decided that the rejection of her application was insufficiently supported and that Taida had to be heard on her objection according the right to a fair trial and the right to freedom of expression, respectively Arts. 6, 10 ECHR and Arts. 12, 13 CRC. On 28 February 2006, the Minister dismissed the objection and decided that Taida had to leave the Netherlands within four weeks. On 7 March 2006, the majority of the *Tweede Kamer* supported this decision.

On 21 March 2006, Taida went into appeal against the dismissal of her objection and asked to await the decision in the Netherlands. On 28 March 2006, the judge approved her application to await the decision in the Netherlands. On 21 April 2006, the Aliens Chamber dismissed her appeal. Taida could go in higher appeal at the Council of State; however, it is not possible to await the decision in the Netherlands (de Rechtspraak, 2006).

Taida chose to leave the Netherlands, now she finished her school exams. On her last day of school on 27 April 2006, she said goodbye to all her friends. On 28 April 2006, she left the Netherlands and in June 2006, she passed her finals. In July 2006, she was granted a temporary residence permit. In August 2006, she went to study Law at the University of Leiden. The *Van Beek-Donnerstichting*, a foundation that supports underprivileged women in gaining financial independence, helps financing Taida’s studies. In order to obtain a student permit, the student has to be able to afford to live and study in the Netherlands. The foundation was impressed by her perseverance. In 2010, Taida graduated in Civil Law and in 2011, she joined a law firm in Amsterdam as a trainee lawyer (Wikipedia, De vrije encyclopedie, 2013). The Taida-case demonstrates that the asylum procedures were legal; however, they were far from efficient and rapid. According to Art. 13 ECHR, UMAs have the right to an effective remedy before national authorities for violations of rights under the Convention, thus Taida acted lawfully right. During the entire procedures, the government was trying to act according the national law, however, the emphasis should be put on the universal rights of the child and its well-being instead of lawfully, long procedures.

## 4.2 Case: Mauro

On October 2011, the asylum case of Mauro Manuel became well-known nationally and internationally, due to his possible deportation because he would reach the age of eighteen. According to Art. 1 CRC, Mauro no longer is a child when reaching the age of eighteen. This means that he will be then treated as an adult, and therefore, should be deported. Mauro’s possible deportation is controversial. In October 2011, a parliamentary debate was devoted to the issue, despite of the fact that the parliament usually does not comment on individual cases. Mauro presented himself in several television shows and his story became national and international news. Opinions of parties in the parliament were divided: on one hand, there was a coalition of tolerance, but on the other hand, deportation was according asylum procedures. This shows the difficulty in appropriate law-making concerning UMAs for governments in the Netherlands, in the EU and in fact all over the world.

Mauro Manuel (Angola, 18 November 1992) was born in Angola. In 2002, his mother put him on a plane to Europe. In 2003, after a short stay in Portugal, he came to the Netherlands. Initially, his half-sister took him in, but after six months, the ten-year-old Mauro reported himself to the police as an unaccompanied minor asylum seeker. With that status, Mauro was accommodated with a foster family in Budel (Art. 20 CRC – Right to special care provided by guardians) and after that, he went to his current foster parents Hans Mandigers and Anita Marijanovic in Oostrum, and recently in Eindhoven. The family tried to adopt him; however that was not possible, due to the fact that Mauro’s parents were still alive.

In 2007, Mauro’s original application for asylum was denied. Mauro’s mother gave permission for an adoption procedure; however, sufficient legalized papers were not available. Moreover, the court could not conclusively determine that the mother indeed agreed to adoption, therefore, the adoption was rejected. On 20 May 2011, his application from 2009 for a residence permit on the basis of Art. 8 of the UN Declaration of Human Rights (Right to family life), was rejected by the verdict of the Council of State. Earlier, on 4 October 2010, the Court of Amsterdam (referring to the Convention on the Rights of the Child) stated that Mauro was entitled to a permanent residence permit. The Minister did not execute that judgment and filed appeal in Higher Court. On 4 October 2010, the Council of State destroyed the judgment, due to the fact that the court allegedly judged as the IND. A substantive judgment was not given.

When Mauro filed an application for a study permit, it seemed that data, given by Mauro, did not comply with the Angolan passports he delivered up in 2002 and 2010. The surname of Mauro’s father Estêvão was documented in the passport and the date of birth was not correct. In the media, these errors were concerned as fraud; however, according to Mauro’s lawyer, the data on the Angolan passports were incorrect. Former Minister Leers of Immigration and Asylum Affairs announced that he would not charge these mistakes. On 20 November 2011, Mauro’s lawyer announced that a study permit was granted. The study permit is valid until the end of the academic year, on 1 September 2012, and can be extended (Vreemdelingen.com, 2011).

Various party members of the Dutch parliament, such as Leers, indicated that both the law and their discretionary competence could not grant Mauro a residence permit. However, Defence of Children stated differently, referring to the Declaration of the Rights of the Child and to an investigation of Margriet Kalverboer of the *Rijksuniversiteit Groningen*. The investigation claims that asylum children, who have been living in the Netherlands for more than five years, are completely ‘rooted’ in Dutch society. UMAs would bond to family and environment even more rapidly. Refoulement to the country of origin after years of staying in the Netherlands would cause permanent (mental) damage in the development. Mauro already lived and was ‘rooted’ in the Netherlands for ten years and by now falls under the Children’s pardon. This case demonstrates that ‘rooting’ has become a significant aspect of criteria concerning UMAs (Kalverboer & Zijlstra, 2008).

# Conclusion

Millions of people are forced to leave their home, their family and friends, their country due to the fact that their human rights are being violated. Therefore, migration and refugees have become a highly debated topic all over the world and at all levels. The United Nations plays a special role by providing declarations and conventions concerning the status of refugees and the rights of the child, which is internationally accepted. Also Europe is extremely affected by migration and refugees, therefore, it is obvious that the European Union has adopted several conventions to ensure that Member States will take measures to respect the rights of the child at national level and provide them with adequate assistance and care.

Many unaccompanied minor asylum seekers (UMAs) try to find a new home in other countries and ask for asylum in order to get protection. The Netherlands is the only country with special UMA-policy. UMAs rank high on the priority list of politicians and it is clear that it has to be dealt with at several levels. The asylum procedure has to be executed more efficiently and rapidly. In general, an UMA has to wait years on the decision of the IND concerning the refugee status and residence permit due to lawfully, long procedures. The Child Asylum Law 2012 should provide clarity on the future of the UMAs who are already living in the Netherlands for five years or longer and now are ‘rooted’. This is a positive development which will protect the best interests of the child in line with the UN Declaration of the Rights of the Child 1959, the Convention on the Rights of the Child 1990 and the European Convention on Human Rights 1953, enforced by the European Court of Human Rights. In addition, the Netherlands, adopted the Children’s pardon 2013, which will grant UMAs who have been living in the Netherlands for years a residence permit if they meet all of the necessary criteria. The Netherlands plays an important role in policy-making and should take the lead in Europe. Europe should cooperate with the Netherlands in order to effectively solve this issue. An EU-guideline should be documented with general definitions and provisions needed in order to provide adequate protection and care for children.

There are two major cases that were highlighted by the media: The Taida-case and the Mauro-case. Jurisprudence shows that asylum procedure includes a long period of time and that the focus has to shift from executing legal procedures to the best interests of the child and a more human approach according to the UN Declaration for the Rights of the Child, the European Convention on Human Rights and the Convention on the Rights of the Child.

# Recommendations

Great efforts have been made and are still being made in order to deal with UMAs. However, the previous chapters demonstrate that there are still a number of deficiencies. This chapter comprises recommendations which could ameliorate these issues.

* The Dutch government should get a better overview on alien children in the Netherlands and the duration of their stay in order to make appropriate policy. Children should be better monitored when it comes to the amount of influx, the duration of their stay, their well-being and other relevant aspects.
* The legal procedures should not take more than one year from the beginning of the procedure until the final decision to prevent rooting in the Netherlands and to maintain the goal to return to the country of origin.
* The asylum procedure should always be executed according to the UN Declaration for the Rights of the Child, the Convention on the Rights of the Child and the European Convention on Human Rights.
* The Minister of Alien Affairs and Integration should monitor unaccompanied minor asylum seekers that have returned to their home country. There is no clear information on the current situation in the country of origin. Only a few UMAs who were still in contact with Dutch social workers or other people involved, state that they have to live in distressing circumstances and the conditions for development are very poor.
* Improvement on expertise and competence: Behavioural scientists should play an important role in the legal procedures and decision-making by providing professional reports on the risks on development of the child in combination with the rights of the child. This already occurs when it comes to civil and juvenile justice. The Council for Child protection can provide information and guidance. At the moment, the lawyers that represent the UMAs lack the expertise and knowledge concerning the development of children and therefore do not have satisfactory arguments in order to emphasize the rights of the child.
* The best interests of the child should be considered first when the IND has to make a decision on asylum applications. The best interests of the child are not explicitly documented in Dutch policy. There is only a special admission policy concerning child soldiers and girls who might have to deal with genital mutilation, but not situations such as war or political instability for example.
* Guardians pointed out that an improvement in the social situation is an important cause for an improvement in the achievements at school and motivation. This occurs, for example, when an UMA has a nice foster family and friends at school. Therefore, stability and a perspective for the future are necessary for the development of the child.
* The Netherlands should continue international cooperation with countries of origin of the UMAs to set up special programs concerning, for example, refoulement and adequate shelter facilities.
* Proper and suitable assistance concerning social-emotional, psychological problems due to horrible situations in their home country, from teachers, guardians and social workers should be available.
* A limited settlement for foster children who:

1. came to the Netherlands as unaccompanied minor aliens;
2. at an age younger than twelve years;
3. since then, have been living in the Netherlands longer than eight years;
4. are rooted in a foster family.

This settlement is based on the UN Declaration for the Rights of the Child, the Convention on the Rights of the Child, the European Convention on Human Rights and other (national) policy:

1. Unaccompanied minor aliens have the right to special protection, because they are vulnerable (as a child, as an alien and unaccompanied) under Art. 22 of the Convention on the Rights of the Child.
2. Children younger than twelve years are being placed in a foster family.
3. Eight years is the norm for rooting which is accepted by former Minister Leers.
4. According to Art. 20 of the Convention on the Rights of the Child, foster children have the right to special State protection. Deportation of foster children after a long period violates their right to family and private life (Article 8, European Convention on Human Rights).

This will replace, for example, a temporary study permit which still causes uncertainty for the UMA.

* Amelioration of shelter facilities in order to provide appropriate guidance and professional assistance if necessary. Most children have to deal with their experiences and think about their perspective of the future. Also, the environment should meet essential conditions in order for children to develop properly. This should be available in the Netherlands, as well as in their home country.
* A scientific research should be held amongst children who were granted the Children’s pardon, on the effects of prolonged uncertainty in their development. This will provide further insight in the future adjustments on UMA-policy.
* The IND, the COA and the Office of Youth Care should cooperate closely in order to provide children in need of assistance with proper care.
* There should be an instrument for independent experts in order to examine the well-being of the child and to give further advice.
* The possibility of going to juvenile court in order to uphold and respect the rights of the child should be accessible.
* There should be a transition settlement for the massive group of UMAs who entered the Netherlands under the current UMA-policy and old UMA-policy.

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# List of Appendices

* Appendix I: Matrix 1 - Overview of UMA-policy in other EU-countries
* Appendix II: Declaration of the Rights of the Child 1959
* Appendix III: Convention on the Rights of the Child

## Appendix I: Overview of UMA-policy in other EU-countries

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Austria** | **Belgium** | **Denmark** |
| **1. Is there special policy for UMAs?** | No special policy for UMAs. Within the policy for adults, exceptions are made for minors without guidance. | No, similar asylum procedure as adults | No special policy for UMAs. In the adult asylum procedure, exceptions are made for minors without guidance |
| **2. Concept policy** | - | - | Unaccompanied minor is allowed temporary stay unless they can be sent (back) to a country where shelter is provided by close family or if they already obtained a residence permit in another country |
| **3. On which level** | - | National and administrative units (Flanders, Wallonia, Brussels); limited coordination in between | National. During the asylum procedure, the Immigration Service, part of the Ministry of Foreign Affairs, is responsible. Responsibilities are delegated to the Red Cross. After granting of residence permit, local authorities take over responsibilities. |
| **4. Definition ‘unaccompanied’** | There is no legal term for UMAs, however, minor asylum seekers are defined unaccompanied when they are under 19 years and separated from both parents and are not being taken care of by an adult with legal competence | Person < 18 years without company of father/mother, legal custodian or spouse | Minors without guidance of legal representative |
| **5. Definition ‘minor’** | Age of majority and legal competence of minors depend on legal provisions in the country of origin. Generally, this means that children who turn 18 years are treated as adults. They will then have to leave the shelter facilities provided by Youth Care. However, asylum seekers have legal competency when turning 16 | < 18 | < 18 |
| **6. Definition ‘adequate shelter’** | Minor asylum seekers are being treated as adult asylum seekers. Execution of deportation: negative decision. However, if the UMA is < 16, UMA can only be deported if there is immediate shelter and care which fits the age and development of the UMA | - | Shelter provided by close family, although few activities to find family |
| 1. **7. Definition ‘independent living’** | - | - | - |
| 1. **8. Obligatory education** | Minor asylum seekers without guidance fall under obligatory education. However, it is unclear if they actually get education. There are schools available at the shelter facilities where German is given | Territorial, until 18 years (but no check-ups on UMAs and sometimes rejected by schools) | Obligatory education does not apply on UMAs |
| 1. **9. Special/customised education** | - | No, although sometimes language courses, private initiatives |  |
| 1. **10. Consequences when reaching age of majority** | Deportation | Refusal of asylum application: deportation/illegal |  |
| 1. **11. Return policy** | - | No |  |
| 1. **12. Content return policy** | - | - |  |
| 1. **13. Measurements against abuse** | Age research: unclear. According to the law, x-ray photos of wrists are prohibited for use of age examination. In practice, age examination is executed via an “inspection of a public health officer”. The content of this inspection is unknown | When in doubt: age test (often bone measurement) | In Denmark, age research is used on a very limited scale |

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| --- | --- | --- | --- |
|  | **France** | **Germany** | **Greece** |
| **1. Is there special policy for UMAs?** | No, similar asylum procedure as adults, however, there are special rules/provisions for UMAs | No, not on federal level, policy can vary between federal states | No special policy for UMAs |
| **2. Concept policy** | - | - | - |
| **3. On which level** | National | National and federal states (Bündeslander) | National |
| **4. Definition ‘unaccompanied’** | - Minor without parental and legal representative (*mineur sans répondant légal*)  - UMAs accompanied by adult brother/sister are qualified unaccompanied unless they have legal custody | - Staying in Germany without parent(s) or an adult with the legal competence to take care of the child  - UMAs accompanied by adult brother/sister are qualified unaccompanied unless they have legal custody | The definition of ‘separated children’: "*children*  *under 18 years of age*  *who are outside their*  *country of origin and*  *separated from both*  *parents, or their previous*  *legal/customary primary caregiver*". (Statement of Good Practice, Separated Children Programme). This does not specifically concern UMAs. It is unknown what happens to UMAs who reach the age of majority during the asylum procedure |
| **5. Definition ‘minor’** | < 18 | < 18 (but sometimes < 16, depends on the concerning federal state or aiding organisation); when 17 years adult status, but still a minor | < 18 |
| **6. Definition ‘adequate shelter’** | - | Shelter in country of origin by parents, or an appropriate guardian who can take care of the UMA | 90% of unaccompanied minors are reunited with their parents. There is no information on asylum seeking minors. If reunification is not possible (immediately), the International Social Service will be tracing family. If family cannot be found, children will be sent to other Greek institutions. |
| 1. **7. Definition ‘independent living’** | - | - |  |
| 1. **8. Obligatory education** | Territorial, until 16 years | Not obligatory for UMAs, unless they have refugee status (until 16 years) (responsibility of local authorities; big differences between Länder) | It is not clear if obligatory education applies to UMAs. It is possible to get prep schooling or complementary Greek language schooling |
| 1. **9. Special/customised education** | Yes, there are prep schools (CLIN), where UMAs learn French next to the normal program | Some Länder provide prep schooling to assist when going to regular education | - |
| 1. **10. Consequences when reaching age of majority** | Application of asylum according adult asylum procedure; no special treatment/ the fact that the person was a minor when entering the country is not taken into account | Refusal of asylum application: according to the law deportation; in practice not the case | - |
| 1. **11. Return policy** |  |  | - |
| 1. **12. Content return policy** | - |  | - |
| 1. **13. Measurements against abuse** | Almost always age test (bone and dental examination) while UMAs are being held in the “waiting zones” | When in doubt: non-medical age rating (*Inaugenscheinnahme*)(medical research is abolished due to doubts about reliability and ethical and legal objections) | When in doubt: UMAs usually get the benefit of the doubt |

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| --- | --- | --- | --- |
|  | **Ireland** | **Italy** | **Luxembourg** |
| **1. Is there special policy for UMAs?** | No special policy for UMAs; they fall partially under the Refugee Act and the Child Care Act | No special policy for UMAs. This is not considered necessary due to the small numbers. However, in the immigration policy is determined that UMAs are immediately being directed to juvenile court, but the same admission rules for other asylum seekers apply to them as well. In principle, UMAs have the same procedure as adult asylum seekers, but the evaluation commission does take into account the ‘degree of maturity’ of the UMA in the assessment of his/her story | No special policy for UMAs. The amount of UMAs going to Luxembourg is rather small |
| **2. Concept policy** | - |  | - |
| **3. On which level** | National | National (Ministries of Internal Affairs and Justice) | - |
| **4. Definition ‘unaccompanied’** | An alien under 18, separated from both parents and no care from an adult who has legal or customary responsibility | Definition of an UMA: “a minor who is not accompanied by parent(s), grandparent(s), or an adult brother/sister”. Italy has more unaccompanied minor aliens instead of unaccompanied minor asylum seekers. There are few unaccompanied minors who ask for asylum in Italy. As a result, there is no need for special policy | There is no legal term for UMAs. In practice, the following definition is used: a minor under 18 years who is unaccompanied in Luxembourg, without (close) family members and without a guardian. An uncle is considered close family, but cousins are not considered close family |
| **5. Definition ‘minor’** | < 18. There is no special policy for UMAs that reach the age of majority during the asylum procedure. The ‘UMA’ will be further heard after reaching the age of majority and treated as an adult, but the age of minority when applying for asylum will be taken into account | < 18 | < 16 |
| **6. Definition ‘adequate shelter’** |  |  | - |
| 1. **7. Definition ‘independent living’** | - | - | - |
| 1. **8. Obligatory education** | Obligatory education until 16 years; also applies to UMAs | Obligatory education until 16 years; also applies to UMAs | Obligatory education until 15 years; also applies to UMAs |
| 1. **9. Special/customised education** | Special/customized education is not regulated by government; it depends on possibilities/facilities on schools. It has happened that UMAs were required to go to school without any knowledge of English and without any assistance | Officially, education in mother tongue is provided, but in practice, this is seldom realised due to a lack of qualified teachers | - |
| 1. **10. Consequences when reaching age of majority** | - | When reaching the age of majority, usually the UMA may stay in Italy | - |
| 1. **11. Return policy** | - | Yes | - |
| 1. **12. Content return policy** | - | The Italian government stimulates repatriation of minors via the Committee for the Tutelage of Unaccompanied Minors. In general, minors are not being deported. In practice, many UMAs stay in the country, even if the application is rejected. This is often due to problems with obtaining identity- and travel documents and the localisation of parents | - |
| 1. **13. Measurements against abuse** | No provisions, procedures for age research and localizing family members, mainly because Ireland does not have many UMAs | When in doubt: age research can only be executed with approval of the Tribunal for Minors | No age research. The given age by UMA will be used |

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|  | **Portugal** | **Spain** |
| **1. Is there special policy for UMAs?** | No special policy for UMAs | No special policy for UMAs, but decision on asylum application will be taken when UMA reaches the age of majority or when custody insists in immediate treatment. Until that time, UMA gets protection and care |
| **2. Concept policy** | - | - |
| **3. On which level** | National | National and regional |
| **4. Definition ‘unaccompanied’** | No specific definition for UMAs, but if a minor travels with a family member, also older brother/sister, they are not considered unaccompanied | Definition UMA: an individual under 18 who is travelling to Spain and asks for asylum without being accompanied by parents or other legal guardians |
| **5. Definition ‘minor’** | < 18. Due to doubts about the accuracy of their statements, 16/17 year old UMAs are usually being treated as ‘de facto’ adults. However, age research is not being executed | < 18 |
| **6. Definition ‘adequate shelter’** | - | - |
| 1. **7. Definition ‘independent living’** | - | - |
| 1. **8. Obligatory education** | Obligatory education until 14 years, but only if UMAs have access to the asylum procedure and obtained a temporary residence permit | Obligatory education until 16 years |
| 1. **9. Special/customised education** | In practice, it is difficult for UMAs to receive education because the previous school qualifications must be acknowledged | Children who cannot speak Spanish can get language lessons before going to regular classes. It is not clear if this is standard procedure and who provides it |
| 1. **10. Consequences when reaching age of majority** | - | It is unknown when UMA reaches the age of majority |
| 1. **11. Return policy** | No | No |
| 1. **12. Content return policy** | No return policy or special provisions when asylum application UMAs is rejected: family members will not be notified, shelter in the country of origin is not been taken care of, child will not be guided when returning back, there is no monitoring and the situation of the country of origin is not being analysed | Return of UMAs to the country of origin will only happen if family is localised, in accordance with the UN Declaration on the Rights of the Child, or if experienced institutions concerning protection of minors accept the responsibility. The Spanish authorities will in all circumstances not endanger the physical integrity of the UMA or give rise to persecution on the UMA or his/her family |
| 1. **13. Measurements against abuse** | No age research | - |

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|  | **United Kingdom** | **Sweden** |
| **1. Is there special policy for UMAs?** | No, but UMAs fall under Children´s Act for all children in the UK, despite their legal status.  - UMAs get temporary access for a month  - priority is given to their applications | No, but the age is taken into account and there are special provisions/rules for UMAs |
| **2. Concept policy** | Immigration law: objective criteria of asylum applications for minors more important than level of development | - |
| **3. On which level** | National | National |
| **4. Definition ‘unaccompanied’** | A person younger than 18 years who is separated from both parents or their legal or normal caretaker in the country of origin when applying for asylum | A minor with a “non-Nordic” nationality who, without guidance of parents, adoption parents or another person who is appointed by the authorities of the country of origin who does not have the intention to adopt, applies for asylum in Sweden or already obtained a permit because of special reasons before entering Sweden |
| **5. Definition ‘minor’** | < 21 | < 19. If the minor is married or has children, custody and care are not provided |
| **6. Definition ‘adequate shelter’** | - | See 11. Content return policy |
| 1. **7. Definition ‘independent living’** | - | - |
| 1. **8. Obligatory education** | Territorial, from 5 until 15 years (local authorities are responsible; schools can refuse children) | - 7-16 years, local authorities are responsible; attendance not obligatory  - 16-18 Swedish secondary education |
| 1. **9. Special/customised education** | No, but often aid from specialist “English as an Additional Language” (EAL) in regular classes | Right to education in the mother tongue |
| 1. **10. Consequences when reaching age of majority** | No direct consequences, because in the asylum procedure, UMAs > 16 are already treated as adults | If a decision on the asylum application still has not been made, the UMA will be registered again and treated as an adult |
| 1. **11. Return policy** |  | Yes |
| 1. **12. Content return policy** |  | (voluntarily) return of the UMA to the country of origin occurs when:  - parents/other family members in the country of origin are traced and are informed on the return of the child  - there is care and shelter on the spot  - there is mental support, especially when parents insist in not coming back  - international organisations are called on for research possibilities/ need for a ‘family support program’  There is also the possibility to make a ‘recognise journey’ to the country of origin (financed by Swedish immigration service or NGO) to recover connections with country/family. UMAs can stay there for a short or long stay and return to Sweden. |
| 1. **13. Measurements against abuse** | Unknown | When in reasonable doubt or absence of date of birth: medical age test by specialists |

## Appendix II: Declaration of the Rights of the Child 1959

**DECLARATION OF THE RIGHTS OF THE CHILD**

**Adopted by UN**

**General Assembly**

**Resolution 1386 (XIV)**

**Of 10 December 1959**

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|  | | WHEREAS the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom, |
|  | | WHEREAS the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, |
|  | | WHEREAS the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, |
|  | | WHEREAS the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children, |
|  | | WHEREAS mankind owes to the child the best it has to give, |
|  | | Now, therefore, http://www.un.org/cyberschoolbus/humanrights/images/general.gifProclaims    THIS DECLARATION OF THE RIGHTS OF THE CHILD to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles: |
| 1 |  | The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family. |
| 2 |  | The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration. |
| 3 |  | The child shall be entitled from his birth to a name and a nationality. |
| 4 |  | The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services. |
| 5 |  | The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition. |
| 6 |  | The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable. |
| 7 |  | The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.   The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.   The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right. |
| 8 |  | The child shall in all circumstances be among the first to receive protection and relief. |
| 9 |  | The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.   The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development. |
| 10 |  | The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. |

## Appendix III: Convention on the Rights of the Child

**Convention on the Rights of the Child**

**Adopted and opened for signature, ratification and accession by General Assembly**

**resolution 44/25 of 20 November 1989**

**entry into force 2 September 1990, in accordance with article 49**

**Preamble**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

**PART I**

**Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

**Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

**Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare

institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities,

particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

**Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

**Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article 6**

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon application, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such an application shall of itself entail no adverse consequences for the person(s) concerned.

**Article 10**

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

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

**Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

**Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and majority of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and eighteen.

**Article eighteen**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or

multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph

2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with

emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care,

through, inter alia, the application of readily available technology and through the provision of

adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and

services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to

achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and

vocational education, make them available and accessible to every child, and take appropriate

measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to

education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or

punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

**Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following

guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate,

through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and

institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the

realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

**PART II**

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

**Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

**Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may application from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

**Article 45**

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain an application, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these applications or indications;

(c) The Committee may recommend to the General Assembly to application the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information

received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

**PART III**

**Article 46**

The present Convention shall be open for signature by all States.

**Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with an application that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have

accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the

Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

**Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present

Convention.

**Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.