



# A rights-based approach to Afghan unaccompanied minors in the Netherlands

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## Introduction

In the past few years Afghan unaccompanied minors (UAMs) have become the largest group of UAMs in Europe (Eurostat, 2011). This is also the case in the Netherlands (VluchtelingenWerk Nederland, 2011). The almost three decades of conflict in Afghanistan have forced many Afghans to seek refuge abroad (Jazayeri, 2002). In the last few years the security situation in the country appears to have worsened (UN Secretary General, 2010) and the socio-economic circumstances in the country are currently poor (UN Development Programme, 2010).

This may explain at least partly the continuous and even increased number of Afghans and Afghan unaccompanied minors in Europe.

However, relatively little knowledge is available about the Afghan unaccompanied children that arrive in the Netherlands. Knowledge on their background can be crucial for the development of policies on a wide range of issues, such as the applications for asylum, their economic potential and integration in the Netherlands, and their possible return. This research aimed to conduct a background study of Afghan unaccompanied minors in the Netherlands through a thorough literature analysis and interviews with key stakeholders: the Central Agency for the Reception of

Asylum Seekers (Centrale Opvang Asielzoekers, COA), Xonar (which provides small-scale accommodation and guidance to UAMs in south Limburg), the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND), the International Organization for Migration (IOM), and 15 Afghan UAMs. In addition, over 80 hours of participant observations were conducted at one UAMs campus to study the day-to-day situation of unaccompanied minors in a campus in 2011.

In this policy brief a profile of the Afghan UAMs is presented as well as an overview of the Dutch asylum and reception system. On the basis of the results this brief then examines whether the situation of Afghan unaccompanied minors in the Netherlands is in accordance with the UN Convention on the Rights of the Child (CRC, 1990). The brief also includes policy recommendations that may help to address any identified shortcomings.

## Profile of Afghan unaccompanied minors in the Netherlands<sup>1</sup>

The majority of Afghan UAMs in the Netherlands are boys claiming to be between the ages of 15 and 18 and are most commonly of Hazara ethnicity. They come from relatively small families and many of them have lost at least one family member. They tend not to be from the poorest families, because their families could pay for the expensive journey to the Netherlands and often owned land or a shop. However, economically, the children who had been living in Iran prior to departure seemed worse off. The educational background differed considerably, because almost half of the minors had never received education before coming to Europe and the others had been to school either only one year or had almost finished high school. Their main motivation to leave Afghanistan was the violence there and in Europe they hoped to find a better future. The journey was, in most cases, arranged by their parents with the help of smugglers. In contrast to previous research (UNHCR, 2010a; UNHCR, 2010b; UNICEF, 2010), the maternal uncle was not mentioned when the arrangements for the journey were discussed. The common route that was taken was from Iran to Turkey and with a boat to Greece and then to Italy and France. The last part of the route would normally be done by train. In a few cases children travelled by plane. The journey would generally last a few months, except when the minor had to earn the money to pay for the journey on his way to Europe.

## The Dutch asylum system and reception facilities

Since the amendments to the Aliens Act 2000, which were implemented in July 2010, the asylum procedure has changed considerably in the Netherlands with specific policies and procedures applying to unaccompanied minors (Ministry of Justice, 2010a). Upon arrival by air at Schiphol airport and claiming asylum the unaccompanied minor is received by the Royal Military Constabulary (Koninklijke Marechaussee, Kmar), which conducts an investigation into the identity of the minor. If the minor arrives by land, he/she is received by the Aliens Police and they also carry out the identity investigation. In both cases, the Aliens Police consult EURODAC and the minor is transferred to the Application Centre at Schiphol airport. However, if the Kmar or the Aliens Police considers the asylum applicant a minor based on his/her physical appearance, the minor will be transferred as fast as possible to a UAM trail reception location. Moreover, Nidos is informed, which is the organisation responsible for the representation of UAMs during the asylum (and appeal) procedure (EMN,

2010; Ministry of Justice, 2010b; IND, personal communication, 11 May, 2011). When the asylum claim is submitted, the rest-and-preparation period of six working days starts for those who arrived by land, which allows a minor to prepare for the asylum procedure. For those minors arriving by air this period starts when he/she is transferred to a UAM trail reception location. After this period the asylum procedure starts, which lasts eight days, but extensions are possible (Ministry of Justice, 2010b; IND, personal communication, 11 May, 2011). The asylum claim is assessed by a department of the IND that is specialised in dealing with these minors, called the Unit for national unaccompanied asylum seekers tasks (Unit Landelijke AMA-taken) (EMN, 2010). This study found that age tests are not regularly used in the Netherlands and none of the interviewed Afghans mentioned age tests.

There are different options for the reception of unaccompanied minors, which depend on their age and level of development. Minors that are under the age of 13 are placed by Nidos in a foster family and COA provides the reception for minors that are 13 years or older (EMN, 2010). They can either be placed in a Child Residential Group (CRG), a Small Residential Unit (SRU), or a campus. The first consists of a residence in which no more than 12 unaccompanied minors between the ages of 13 and 17.5 live. In a small residential unit there live at most four unaccompanied minors between the ages of 15 and 17.5. A campus is meant only for those minors between the ages of 15 and 18 and has a capacity for 100 minors. The small scale reception in CRGs and SRUs is outsourced to other organisations, the majority of which are youth health organisations (COA, 2011).

The daily care and education is organized by Nidos and COA, who also arrange a guardian (Nidos) and mentor (COA) for the minor. Minors have free access to education and they can attend regular classes immediately. In practice this is often impossible as the minor first has to learn Dutch. Therefore, unaccompanied minors normally first learn Dutch in special classes before they attend a regular school. In addition, they receive living allowances and there are possibilities to work depending on the age and immigration status of the child. Special procedures exist for victims of trafficking and smuggling and in exceptional cases detention is possible (EMN, 2010). In the Netherlands, it is considered important that a minor returns when his/her asylum claim is rejected. However, if no adequate reception is available in the country of origin, the minor has the right to stay in a reception centre until he/she turns 18 (EMN, 2010).

<sup>1</sup> Although this study was based on a limited number of interviews with minors, the information obtained corroborates the findings from other studies (UNICEF, 2010; UNHCR, 2010a; UNHCR, 2010b) concerning the background of Afghan minors in Europe.

## A rights-based analysis of the findings

The following issues are addressed with regard to the CRC: the reception facilities and transfers, the educational possibilities, their integration and participation in the Dutch society, psychological difficulties, the asylum procedure, and the return of Afghan unaccompanied minors.

Concerning the reception of UAMs, a specific article of the CRC deals with the care of children who are deprived of their family environment, as is the case with unaccompanied minors. This article 20 stipulates that the state should provide special protection and assistance as well as alternative care for these children. The reception facilities available to the unaccompanied minors indicate that their right to special care and assistance, as stated in article 20, and to an adequate standard of living (art 27) are considered. Moreover, the arrangements of a mentor and guardian mean that the minors receive daily care and asylum assistance. Nevertheless, certain aspects of these reception facilities should be improved although in this policy brief the focus will be on the lack of recreational options after school hours, that was mentioned by all the children. During the week there are certain recreational options available for minors. In the reception centre where the research was conducted, the living room, where games such as pool and board games are available, was only open for 1.5 hours in the afternoon and two hours in the evening. Access of the children to internet was restricted to one hour a day. Often, one of the mentors would play sports with the interested minors during the same time as the internet room was open. However, especially during the weekends and school holidays they reported being very bored. It is common for these minors to spend these times in their room or in bed, as there is nothing to do. This indicates that improvements can be made in ensuring the children's rights to leisure with play and recreational activities (art. 31), their access to the mass media (art. 17), and their right to an adequate standard of living (art. 27).

The amount of transfers to various reception centres the children had experienced was limited. The majority of the children had been in a location near Den Bosch where the interviews with the IND take place and then were transferred either to the campus or the CRG where the interviews for this study were conducted. Limiting the amount of transfers is in the best interest of the child as transfers significantly disrupt the lives of children with regard to their health (care), education, and social contacts. It is, therefore, recommended that COA should aim to prevent children being moved to more than two reception centres.

In article 28 of the Convention a child's right to education is clearly stated. In the Netherlands, the school attendance for unaccompanied minors is arranged and is free. At the campus a school was present on the site, which ensures the accessibility of schooling. Moreover, the children expressed enjoyment about being able to go to school and the school attendance of Afghan minors tends to be good. Nevertheless, there are opportunities for improvement. Two issues that should be taken into consideration are the long waiting times to go to school that some of the children mentioned and the problems mentors expressed concerning the arrangement of a permit (tewerkstellingsvergunning) and remuneration for those minors who want to do an internship as part of their studies. Furthermore, the minors and mentors both reported that the classes are often very chaotic and that there is a lack of possibilities for children to do their homework in a quiet place. Another common problem is the lack of motivation to attend school among especially those whose asylum claims have been rejected. This may be addressed by offering more English classes instead of Dutch, because knowledge of English can still come of use in their country of origin. It is in their best interest that (Afghan) unaccompanied are able to receive good education as research has shown that access to school has positive effects on the well-being of unaccompanied minors (McCarthy & Marks, 2010) and it helps them to adjust to life in the Netherlands.

Another finding from the study is that Afghan minors seem to have an interest in integrating into Dutch society. They have for example adapted their clothing and are interested in going to school and learning Dutch, while at the same time they retain aspects of their culture, such as the carpets or blankets on the floor of their rooms. However, there are several obstacles that interfere with the minors' ability to participate in the Dutch society and which, therefore, violate articles 3, 27 and 31 of the CRC. One important obstacle is the isolated location of most reception centres, which makes it difficult and expensive for them to leave the centre and go to a city. Two other obstacles are the racism the children reported, the stress they experience as a result of their uncertain situation in the Netherlands, and their lack of Dutch and/or English language skills. A recommendation to help minors with their reintegration is to transfer those who have received a positive (preliminary) decision regarding their asylum claims as quickly as possible to a CRG or SRU, as they will receive more guidance there to learn Dutch and integrate. This study found that the smaller forms of reception in a CRG or a SRU were often preferred to a campus, because they provide more of a family atmosphere and offer more opportunities to speak Dutch. This is particularly relevant at the moment, as the number of Afghan unaccompanied minors is so large that on a campus Afghans are hardly required to speak Dutch except at school.

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Psychological difficulties are common among unaccompanied asylum-seeking children (Bean, Derluyn, Eurelings-Bontekoe, Broekaert, & Spinhoven, 2007a; McCarthy & Marks, 2010) and have also been found in this study. These psychological problems result from a variety of factors that create a lot of stress, such as the uncertainty caused by the long asylum procedure, the trauma's these children have experienced in their country of origin and/or on their way to Europe and the fact that they are in a strange country far away from their family. As a result the children reported problems such as headaches, sleeping difficulties and concentration problems. Many of these complaints together with the depressed mood that was mentioned by several boys, appear to indicate the presence of symptoms related to depression. Some of the boys at the campus were visiting a psychologist. Also at Xonar the mentors mentioned that many children have problems with sleeping and suffer from headaches. Several are using sleeping pills and some are visiting a psychologist.

The psychological difficulties endanger the development of a child (art. 6). Therefore, it is important that the mentors and other significant adults in the lives of minors are aware of the psychological distress and the need for mental health services among minors. If necessary, minors should be provided mental help and long waiting times, which were observed in this study, should be prevented. Moreover, the complicated process to have a minor admitted to a mental clinic should be addressed, since a fast and effective response to serious mental problems is beneficial to the child as well as for the atmosphere at the reception centre. It may be worth considering the implementation of periodic screening for psychological and behavioural problems among unaccompanied minors to prevent any further damage to the child and to provide health care professionals with an instrument to measure whether and what type of treatment is necessary (Bean, Eurelings-Bontekoe, Mooijaart, & Spinhoven, 2006; Bean et al., 2007a; Bean, Eurelings-Bontekoe, & Spinhoven, 2007b). Another suggestion given by Bean et al. (2006) would be to provide "low threshold psycho-education (residential or school-based) programs on active coping skills [which] can empower URM [unaccompanied refugee minors] to manage the trauma and stress they have had to endure and reduce the great (unmet) need these young people have reported for mental health care" (p. 353). The children have the right to the "highest attainable standard of health" and to access to health care services (art. 24) and especially those minors who have experienced any trauma as mentioned in article 39 should be provided the care to encourage their physical and psychological recovery.

With regards to the legal situation, it is difficult to establish the truth in the stories told by the children. Nevertheless, the Dutch authorities are asked to continue carefully considering the asylum claims of the children as their stories seem to indicate the violation of human rights, including the fear of persecution, abduction and recruitment. Those who had been living in Iran had suffered from poverty, discrimination and the constant threat of being deported. Moreover, it should be kept in mind what children travelling unaccompanied have endured on their journey to the Netherlands. The journey normally takes at least a few months during which the children endured exploitation and fear, had to travel in, to say the least, uncomfortable circumstances and sometimes would even see other travellers die. Therefore, it is important that this knowledge is taken into account when asylum claims are assessed and during the reception of these minors. Moreover, the asylum procedure is a lengthy process which can last up to one or 1.5 years due to, for example, (repeated) appeal procedures of the IND decision, although there seem to be indications that the amendments to the Aliens Act have decreased the time of the asylum procedure (IND, 2011). This is an important step forward as the asylum procedure causes a lot of uncertainty and stress among children and makes it impossible for them to plan their lives. The importance of the (vulnerable) position of asylum seeking minors is emphasised by the fact that the CRC devotes an entire article to them. Article 22 emphasises that state parties have to provide them "appropriate protection and humanitarian assistance". Therefore, it is in the best interest of the UAM that the asylum procedure is as short as possible.

Another finding from this study was that the asylum decisions were not always considered fair by mentors as well as Afghan minors, mainly because the behaviour the minors displayed in the centres is not related to the decision the IND makes about their asylum claim. Although the short time period of the asylum procedure does not seem to allow for the incorporation of the minor's behaviour into the decision-making process of the asylum claim, it might be worth considering the observations of mentors regarding the behaviour and integration of the children in the decision-making process regarding the return of the minor when he/she turns 18.

The end of the asylum procedure does not mean the end of the minors' worries or their uncertainty about the future, as the asylum procedure tends to result in a negative decision. Of the 31 Afghan boys at the UAM campus only five had been granted asylum and one had received UAM status allowing him to stay in the Netherlands until turning 18. However, a definite intention to stay was expressed by everyone and interest in return programmes is very limited. This is confirmed by statistics of the IOM that showed that only nine (ex-)UAMs had participated in a voluntary return programme of the IOM in 2009. This lack of interest might be due to the amount of money that is invested in the children to come to Europe and the humiliation they would feel and cause their families if they returned, as was suggested by mentors. The (forced) return of these children does not seem to be a suitable option. First of all, it will be difficult to arrange reception in Afghanistan, especially considering the fact that they all claimed not to have contact with their parents, which means adequate reception in the country of origin has to be arranged. Second, it will not be in their best interest to deport those Afghans that are truly minors. The UNHCR mentions that return should only take place when the Afghan child has family or community connections there. "Residential care is the least preferred form of care for any separated child" (UNCHR, 2010b, p. 59) and should only be temporary. Moreover, the current practice of establishing reception centres in the countries of origin where children can be returned to quickly without an individual assessment of the child's best interest, would not be in accordance with the CRC as mentioned by Hammarberg, the Human Rights' Commissioner of the Council of Europe (2010). Third, it does not seem effective to send Afghan children back to Afghanistan as they will most likely disappear before they are deported and either continue living in the Netherlands illegally or try to go to a different country. Thereby, the large networks of Afghan minors can be helpful.

### Conclusion

To conclude, this migration policy brief discussed the findings of a study of Afghan unaccompanied minors in the Netherlands that was conducted in the beginning of 2011. After providing a brief overview of this study, the profile of Afghan UAMs and the Dutch asylum and reception system, the results were discussed. On the basis of the Convention on the Rights of the Child the following issues were analysed and policy recommendations were suggested: the reception conditions and transfers, educational facilities, the minors' integration and participation in the Dutch society, the psychological difficulties these children face, the asylum procedure, and their return.

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