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Asylum seeker awaits processing of his asylum claim at the Rijsbergen reception center. ©2003 Joost van den Broek

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country.

—UNHCR Handbook on Procedures and Criteria for Determining Refugee Status

Asylum seekers arriving to the Netherlands are really not thinking at that moment about the procedure or the criteria for protection. They are busy thinking about practical things. Where can they wash their underwear? Where can they take a shower? It all goes so fast that they cannot come to peace.

—Eduard Nazarski, Director,
VluchtelingenWerk Nederland

FLEETING REFUGE: THE TRIUMPH OF EFFICIENCY OVER PROTECTION IN DUTCH ASYLUM POLICY

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THE NETHERLANDS

FLEETING REFUGE: The Triumph of Efficiency over Protection in Dutch Asylum Policy

EXECUTIVE SUMMARY	2
RECOMMENDATIONS.....	3
Regarding the accelerated asylum determination procedure	3
Regarding the treatment of migrant children in asylum and immigration procedures.....	4
Regarding reception conditions for asylum seekers	5
THE ACCELERATED ASYLUM DETERMINATION PROCEDURE.....	5
The procedure at the Aanmeldcentra (AC Procedure).....	6
Cases involving issues of a complex or humanitarian nature.....	6
Lack of meaningful access to legal counsel.....	10
Accelerated credibility determinations and their impact on asylum seekers' claims	10
Judicial review of cases rejected in the AC procedure.....	13
TREATMENT OF MIGRANT CHILDREN IN ASYLUM AND IMMIGRATION PROCEDURES.....	15
Applicable international standards.....	16
Asylum determination procedures involving children.....	17
The determination that a child is accompanied.....	22
RECEPTION CONDITIONS FOR ASYLUM SEEKERS.....	28
CONCLUSION.....	31
ACKNOWLEDGEMENTS.....	32

EXECUTIVE SUMMARY

In recent years the Netherlands has successfully tailored its asylum policies and practices with an eye toward stimulating efficiency in decision-making and deterring manifestly unfounded claims. As a result, requests for asylum are dramatically lower while the percentage of applications processed in accelerated procedures has significantly increased. But as this report details, the Dutch government has pursued its new asylum policies at the expense of fundamental asylum and refugee rights. After three months of research into Dutch asylum policies, Human Rights Watch has identified three areas of particular concern: violations of refugee and asylum rights in the accelerated procedure; inappropriate treatment of migrant children; and restrictions on asylum seekers' rights to basic material support, such as food and housing. This report elaborates these concerns and identifies measures the Dutch government should take to address them.

Over the past several years, the Netherlands has left behind its traditionally protective stance toward asylum seekers to take up a restrictive approach that stands out among Western European countries. In December 2002, the office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva observed a rise in anti-migrant attitudes in Europe, writing in its 2002 overview that “[a] high temperature against foreigners in Europe crossed a new threshold, especially in countries like Denmark and the Netherlands, traditionally major UNHCR donors and supporters.”¹ Dutch politics over the past year has reflected this shift, featuring renewed calls for efficiency in processing asylum seekers; drastic reductions in budgetary costs associated with the processing of asylum applications; better immigration control through tougher requirements for family reunification and increased deportation efforts; and stricter integration requirements for refugees and migrants. In July 2002, governmental coalition partners created the post of Minister for Immigration and Integration, making the management of immigration flows and the control and evaluation of refugees' and migrants' integration efforts a top priority. These themes also figured prominently in the recent general elections. The new government that forms in the coming weeks should take stock of the human rights effects of policy developments in the asylum field over the past five years and consider ways in which asylum policy can be realigned to comport more closely with the Netherlands' international protection commitments.

Although the most recent Dutch law on asylum and immigration—the Aliens Act 2000, effective April 2001—is in many ways similar to the previous asylum and immigration act dating from 1994, the few changes that were made have had a clear impact on the practice of asylum law and policy. Perhaps most significant has been the shift in final authority for appeals in asylum and immigration cases to the Raad van State (Council of State), the Netherlands highest administrative court, which has given a strikingly restrictive cast to Dutch asylum law. The new law—particularly as interpreted by the Raad van State—has resulted in routine infringement of asylum seekers' most basic rights—the right to a meaningful opportunity to be heard and to seek asylum and refuge outside one's own country. It is critical that any process for evaluating asylum requests not undermine these principles in the interest of speed and efficiency. In this respect, Human Rights Watch is particularly concerned that the mechanism intended to speed the processing of asylum applications—the accelerated procedure in the *aanmeldcentra* (reception centers) or the “AC procedure”—is being used inappropriately and with little opportunity to repair errors through a meaningful judicial review opportunity.

The AC procedure is regularly used to process and reject some 60 percent of asylum applications, including those lodged by people fleeing countries torn by war, ethnic strife, and grave human rights abuse. It is also used to decide applications involving complex legal or factual issues or severe trauma, which can only be given cursory consideration in the rapid AC procedure. The process—which lasts only forty-eight working hours—gives applicants little opportunity to document their need for protection or to receive meaningful advice from a lawyer. Finally, the Raad van State has severely limited the scope of judicial review in asylum cases, so that asylum seekers whose claims are erroneously denied in the AC procedure have little hope of redress through the courts.

¹ See UNHCR, *Refugees*, vol. 4, no. 129, December 2002.

Dutch policy and practice regarding the care and protection of migrant children and children seeking asylum in the territory of the Netherlands is also inadequate. More than 30 percent of child asylum seekers in the Netherlands have their applications considered in the accelerated procedure. Child asylum seekers as young as four are frequently interviewed without a lawyer or guardian present. Moreover, Human Rights Watch received a number of reports of asylum interviews with children that focused on detailed questions that were inappropriate in light of the children's age and maturity. Our investigation also revealed violations of international and regional standards in the current policy and practice for determining whether a child is unaccompanied and therefore in need of care and protection, including state-supported efforts to trace families and repatriate them. In many cases the government assigns responsibility for the care of unaccompanied children to distant relatives resident in the Netherlands, even where those relatives may be unwilling or unfit to assume that responsibility. In all of these ways, Dutch treatment of child asylum seekers raises serious questions about its commitment to pursue asylum policies that serve the best interests of these children, as required under the U.N. Convention on the Rights of the Child.

The Dutch policy on asylum seekers' right to reception conditions such as basic housing and food is also of serious concern. Neither asylum seekers rejected in accelerated procedures nor asylum seekers who have filed a second or third application are granted any form of reception support during the appeal or subsequent proceedings related to their claim. The Aliens Act 2000 has also resulted in the automatic termination of all reception benefits for asylum seekers rejected in the full asylum procedure, in some cases even where there are serious health or psychological issues or families with young children involved.

Human Rights Watch recognizes the need for the Dutch government to control immigration and provide efficient review of asylum cases. Our findings indicate, however, that the current approach has breached the Netherlands' refugee and human rights obligations.

Separate chapters of this report detail our concerns and recommendations relating to the accelerated procedure, the treatment of child asylum seekers, and the adequacy of the current policy for providing asylum seekers material reception benefits. Based on this analysis of the effects of recent policy changes, Human Rights Watch urges the Dutch government to act promptly to bring its asylum and immigration policy and practice into full compliance with international and regional standards.

RECOMMENDATIONS

Regarding the accelerated asylum determination procedure

- Revise current policy and practice to recognize that individuals from a much wider range of countries than those currently listed as categorically "unsafe" require access to the full determination procedure in order to establish whether they are in need of international protection.
- Ensure that cases involving serious physical or psychological problems at the time of the applicant's asylum interview, cases involving possible victims of torture or sexual violence, and other persons exhibiting symptoms of trauma, be exempted from accelerated consideration and admitted to the full asylum procedure.
- Direct asylum officers of the department of immigration and naturalization (*Immigratie en Naturalisatiedienst*: IND) to transfer complex cases requiring additional investigation to the full asylum determination procedure. Cases involving the application of the six-month trauma guideline, questions of "internal flight options," or other complex interpretative questions, such as whether persecution as a member of a "social group" occurred, should always be transferred.

- Explore ways in which asylum seekers' access to lawyers, preferably a single lawyer throughout the process given the speed of accelerated procedures, can be made more flexible so as to allow adequate time for the claim and any appeal to be prepared.
- Direct asylum officers in the AC procedure, when evaluating credibility, to take into account the limited opportunity available to the asylum seeker to present documentary proof and other relevant information.
- Take urgent steps to ensure that every asylum seeker is provided an adequate opportunity to present their claim for asylum, and that judicial review ensures that the merits of the case have been fairly examined.

Regarding the treatment of migrant children in asylum and immigration procedures

- Make clear to all officials that the Convention on the Rights of the Child and other relevant international and regional instruments mandating minimum standards for the treatment of all children are applicable to migrant children regardless of their legal status.
- Amend asylum law and policy so that unaccompanied children are always dealt with in the full asylum determination procedure.
- In cases where children have arrived as part of a "child family" and IND subsequently determines that the eldest sibling is an adult, the younger children's applications should be dealt with as part of the adult sibling's application if IND makes the determination that the children are "accompanied" and that the adult sibling is willing and able to speak on their behalf, as would be the case in applications involving parents arriving with children.
- Establish a new policy for interviews with children so that children are supported by a single person, whether a representative of *VluchtelingenWerk Nederland* ("*VluchtelingenWerk*": the Dutch Refugee Council), a guardian, or a lawyer, throughout the asylum process. The person appointed to the child's case should be appointed from the beginning of the case and be available to support the child through all stages of his or her asylum application; IND interviews should not take place in the absence of this person.
- Develop guidelines for asylum interviews of children that ensure that IND authorities assess these applications in light of the child's age and maturity.
- Discontinue the practice of unnecessarily interviewing young children, particularly in cases where a lawyer or state-appointed guardian familiar with asylum law is not present during the interviews. Separate interviews with young children should be conducted only when the child has a distinct fear of persecution and needs to lodge his or her own application on this basis. Where multiple children in a family are interviewed, officials should not place undue emphasis on minor inconsistencies in assessing credibility.
- Amend current asylum and immigration law and policy so that the definition of unaccompanied minor is in conformity with accepted international and regional standards.
- Revise the current asylum and immigration procedure for children so that each child benefits from a separate hearing on the best long-term solution in light of his or her special circumstances.
- Take responsibility for the tracing of children's families in countries of origin and make necessary arrangements for any repatriation, even for those children who are temporarily staying in the Netherlands with extended family, ensuring that repatriations are only carried out where a suitable and willing caregiver has been identified.

- Provide all children, including those who arrived as part of a “child family,” who are allowed to remain in the Netherlands pending their repatriation, with temporary documentation. Children who are permitted to stay with extended family or an adult sibling in the Netherlands, and who cannot be repatriated within the three-year stay requirement applied to unaccompanied children, should be given the option to apply for permanent residence in the Netherlands.

Regarding reception conditions for asylum seekers

- Make immediate provisions for all asylum seekers who have not received a final negative decision on their applications to receive basic reception assistance, including housing, food, and access to health care. This should include asylum seekers awaiting an appeal after a negative decision in the accelerated procedure as well as asylum seekers who have been accepted for consideration in a full asylum procedure on the basis of a new (second) asylum application.
- Devise a system for ensuring that persons who show signs of serious trauma receive necessary treatment and support while in the Netherlands, even if these persons are rejected in an accelerated asylum procedure and ultimately may not meet the criteria for refugee status.
- Separate the asylum determination outcome from the decision to revoke basic shelter, so that rejected asylum seekers in need of humanitarian assistance have an opportunity to request such assistance at any point pending their repatriation or deportation to their country of origin.
- Expand the range of humanitarian circumstances warranting an exception to the automatic termination of housing rights twenty-eight days after a final decision is made to include consideration for vulnerable persons such as families with children, the elderly, and persons who are physically or mentally ill or traumatized.

THE ACCELERATED ASYLUM DETERMINATION PROCEDURE

Dutch asylum law provides for two types of asylum review: an accelerated procedure (“AC procedure”) and a full asylum determination procedure.² The AC procedure results in either a rejection of the claim or a transfer of the claim for consideration under the full procedure. The full procedure may result in a person’s being recognized as a refugee or as a person otherwise in need of international protection (a subsidiary status). The full asylum determination procedure can take from several weeks to a year or more, depending on how long the case requires, and it accords asylum seekers rights throughout the process to certain material benefits such as housing, food, and health care. The accelerated asylum procedure, by contrast, takes place in a matter of days and asylum seekers whose claims are denied are ineligible for material assistance while their appeal is pending. In principle, both procedures utilize the same refugee determination criteria, but in reality the AC procedure truncates consideration of the merits of applications and, as argued below, should be deemed unsuitable for a broad range of cases.

The AC procedure has quickly developed from its origins in October 1994. Initially conceived as a procedure to weed out “manifestly unfounded” asylum claims, by the second half of 2002 it was being applied to at least 60 percent of all cases lodged in the Netherlands.³ This is triple the rate at which the AC procedure was used in past years. Even so, the Minister of Immigration and Integration has suggested that about 80 percent of all asylum applications should be processed and rejected in the AC procedure. Although this number is not an

² See Vreemdelingenwet 2000 (Aliens Act 2000), arts. 28 and 29, in combination with paragraphs 3.111 of the Vreemdelingenbesluit 2000 (Aliens Decree 2000) for the full refugee determination procedure and in combination with paragraphs 3.112 and 3.117 of the Aliens Decree for the accelerated determination procedure.

³ Human Rights Watch interview, IND, Ministry of Justice, The Hague, January 21, 2003.

official target, it has been seen as illustrative of the significant number of asylum cases the ministry believes can safely be processed through the AC procedure. Refugee assistance groups, right groups, lawyers, academics, and even members of parliament have questioned the premises underlying expanded use of the procedure.⁴

The AC procedure is a source of considerable concern for lawyers and organizations working with migrants and asylum seekers in the Netherlands. Dutch asylum lawyers told Human Rights Watch that for the first time in their careers, often spanning some fifteen to twenty years, they are preparing cases to the European Court of Human Rights (ECHR) to complain about the speed and inadequate nature of the AC procedure and the inability or unwillingness of courts to provide effective judicial review to remedy these inadequacies.⁵ In March 2003, for the first time in a case involving the Dutch AC procedure, the ECHR imposed an interim measure, prohibiting the Dutch authorities from deporting the applicant to his native Iran prior to the court's decision on the merits.⁶ This was also the first time that the Court has accepted for review a case involving the Dutch Aliens Act 2000.

Based on interviews with asylum lawyers and review of numerous hearing transcripts, decisions of the department of immigration and naturalization (*Immigratie en Naturalisatiedienst*: IND), and court appeals, Human Rights Watch believes that the AC procedure in many cases deprives asylum seekers of their fundamental right to a full and fair consideration of their claims. The following discussion details these concerns, first assessing the AC procedure itself, and, second, the adequacy of judicial review following the AC procedure.

The procedure at the Aanmeldcentra (AC Procedure)

A number of Western European countries use expedited screening procedures for manifestly unfounded asylum claims. The Dutch AC procedure, however, is used both for manifestly unfounded claims and claims deemed not to require "time-consuming investigation."⁷ The hallmark of the AC procedure is the singular and rather circular requirement that cases suitable for the procedure are cases that the IND can deal with within a forty-eight-hour period. The forty-eight-hour period begins ticking at the moment an applicant registers for asylum consideration at one of four processing centers in the country, not including the hours from 10pm to 8am (i.e. a total of about three-and-a-half days, including weekends). During that time period, IND officers must determine whether the case warrants full asylum consideration or should be rejected without further consideration.

The AC procedure includes two main interviews with IND officials: a first interview in which an applicant primarily gives information about her identity, nationality, and travel route to the Netherlands; and a second interview during which the applicant discusses her reasons for applying for asylum. After the second interview, the IND either decides to forward the case to the full asylum procedure or prepares an "intended decision" notifying the asylum seeker as to the reasons why it plans to reject the application.

Cases involving issues of a complex or humanitarian nature

The parameters defining who should enter the AC procedure are inappropriately vague. The current definition allows enormous discretion on the part of IND officials. Determinations that a case cannot be dealt with within forty-eight hours because, for example, it is complex, it requires further investigation, or it is

⁴ See e.g., parliamentary debate with Minister Hilbrand Nawijn on 31 October 2002, Tweede Kamer (TK: Parliament), 2002-2003, 19 637 and 27 557, no. 696, p. 6. This issue has also been addressed in the European Commission. In late 2002, Dutch MEP Erik Meijer asked in a written question whether the practice of setting targets as to the proportion of asylum seekers to be rejected, as has been done by the competent Minister in his own country, is in line with the 1951 Convention Relating to the Status of Refugees. The European Commission denied knowledge of any official targets. Written Question to the European Commission, no. E-3141/02, October 23, 2002.

⁵ Although some of these cases have been accepted for consideration by the European Court of Human Rights (ECHR), there are as yet no decisions specifically relating to the Dutch AC procedure.

⁶ Human Rights Watch telephone interview with Michel Collet, asylum lawyer, March 20, 2003. For more information about the facts of the case, the court's decision (and the Chamber of the Second Session decision, which also held that article 39 of the European Convention on Human Rights is applicable), and future developments in this case, see <http://www.collet.nu/informatie/EHRMzaak.htm> (accessed March 26, 2003).

⁷ See e.g. Raad van State, decision no. 200103491/1, August 27, 2001; Raad van State, decision no. 200105777/1, December 20, 2001.

complicated by the psychological or physical state of the applicant are highly subjective. This problem is compounded by the fact that IND interviewers are asked not only to weed out clearly inadmissible cases, but also to make quick judgments as to whether or not applicants may ultimately be eligible for some form of protection under Dutch law. This contradicts the guidance of UNHCR's Executive Committee, which recognizes expedited procedures as fair only when applied to cases that are "clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the [1951 Convention Relating to the Status of Refugees.]"⁸

Human Rights Watch is concerned that among those currently channeled into the AC procedure are nationals of countries recovering from conflict or where authorities commit ongoing abuses against certain minorities and individual opponents, such as Afghanistan, northern Iraq, and Somalia.⁹ To our knowledge, only Burundi, southern Sudan, and central Iraq remain on the Netherlands' list of categorically "unsafe" countries/areas, meaning that asylum seekers originating from these places must automatically be considered under the full asylum procedure.¹⁰

Human Rights Watch also came across a number of cases in which the physical or mental well-being of the applicant raised concern about the appropriateness of accelerated processing, regardless of whether the final outcome for the applicant would be positive.

Mariella M.,¹¹ for example, told the IND that she had fled Liberia because she was going to be killed in a sacrificial ceremony. At least five to six times throughout the interviewing process, during which she was expected to fully present the basis for her asylum claim, the interview had to be stopped because Mariella M. seemed physically unwell or too emotional to continue. She was very confused, with bouts of unresponsiveness. Her story was contradictory and scattered in some places, ending with a spontaneous fit of crying. At no point was her fourteen-year-old son, who had fled with her to the Netherlands, interviewed in an effort to corroborate her story or to better understand her physical and emotional state. IND instead chose to process them in the AC procedure and subsequently denied their claim for asylum. When confronted with concerns about why she was interviewed under such circumstances, IND called attention to the fact that they had asked her if she wanted to continue with the interviewing process. Her lawyer explained, "she just wanted it over with and to have rest, not knowing what this could mean to her and her son."¹² She did not realize, in other words, that this was her one and only opportunity to present her story, nor that requesting a pause in the interview would not reflect poorly on her asylum request.¹³

⁸ UNHCR Executive Committee Conclusion No. 30 (XXXIV) – 1983 – The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, para. (d). The Executive Committee of the High Commissioner's Program ("ExCom") is UNHCR's governing body. Since 1975, ExCom has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. While the Conclusions are not legally binding, they do constitute a body of soft international refugee law. They are adopted by consensus by the ExCom member states, are broadly representative of the views of the international community, and carry persuasive authority. Since the members of ExCom have negotiated and agreed to their provisions, they are under a good faith obligation to abide by the Conclusions.

⁹ On February 7, 2003, the Ministry of Justice announced that persons from northern Iraq should not be returned to Iraq and should have access to basic material reception rights even if they are rejected in accelerated or full asylum determination procedures. The halt on deportations to northern Iraq was to be periodically reassessed in light of the international situation.

¹⁰ Human Rights Watch interview with H.P. Schreinemachers, coordinator, Asylum Policy Department, IND, Ministry of Justice, The Hague, January 21, 2003.

¹¹ We have assigned pseudonyms to all of the asylum seekers mentioned in this report in order to protect their privacy.

¹² Human Rights Watch telephone interview with Jan Broersen, asylum lawyer, *Stichting Rechtsbijstand Asiel* (SRA)—Haarlem, January 8, 2003. See also Haarlem district court, decision no. AWB (Algemene Wet Bestuursrecht: general administrative law guidelines) 02/94324, January 9, 2003.

¹³ Although asylum seekers do have information about the AC procedure and should in theory realize that the second interview is their primary chance to present information about their asylum claim, the use of several lawyers throughout the AC procedure in combination with the speed of the procedure may present serious barriers to an applicant's ability to realize both the importance of the procedure and what is expected of them. See the following section for discussion of access to meaningful counsel in the AC procedure.

Stichting Rechtsbijstand Asiel (SRA), an organization of asylum lawyers that coordinates legal aid for asylum seekers whose cases are being heard in the AC procedure, reported another case in which the AC process was applied without apparent regard for the physical well-being of the asylum applicant: Louisa L., a young woman from Ghana, was four-months pregnant when she arrived in the Netherlands. During the first interview by IND about her identity, nationality, and travel route to the Netherlands, she became so unwell that the interview was cut short. Later that day, she had a miscarriage, yet IND requested on the following day that the young woman undergo a bone examination to determine her age and that her interviews under the AC procedure be resumed, regardless of her obvious need for physical and mental rest.¹⁴ In another case, a young pregnant woman from Senegal was so ill that she was under medical observation in-between her IND interviews during the AC procedure. She showed evident signs of trauma, and *VluchtelingenWerk Nederland* (“*VluchtelingenWerk*”: the Dutch Refugee Council) expressed concern about the quality of her testimony under such circumstances. IND nonetheless rejected her asylum request in the AC procedure.¹⁵

Human Rights Watch has also received numerous reports of IND using the AC procedure to process asylum claims from elderly persons suffering from serious health problems, mentally ill persons, people claiming to be survivors of recent torture or sexual violence, and other persons exhibiting signs of severe trauma.¹⁶ Such trauma may relate to their experiences prior to flight or, in some cases, may be the result of experiences during flight. Expedited processing should be deemed inappropriate in such circumstances; all asylum seekers should have a meaningful opportunity to present their cases.

- *Human Rights Watch urges the Dutch government to revise current policy and practice to recognize that individuals from a much wider range of countries than those currently listed as categorically “unsafe” require access to the full determination procedure in order to establish whether they are in need of international protection.*
- *Human Rights Watch urges the Dutch government to ensure that cases involving serious physical or psychological problems at the time of the applicant’s asylum interview, cases involving possible survivors of torture or sexual violence, and other persons exhibiting symptoms of trauma, be exempted from accelerated consideration and admitted to the full asylum procedure.*

Under Dutch law, persons who suffered severely traumatic events have the opportunity to receive a subsidiary form of protection on the basis of those experiences even if their application for asylum would not result in refugee status—so long as the traumatic event is related to the reason for the applicant’s flight from his or her country of origin.¹⁷ IND applies a strong presumption that only traumatic events occurring within six months of flight so qualify; when more than six months have elapsed, the applicant must demonstrate that the traumatic

¹⁴ Email communication from Riëtta van Empel Bouman, case coordinator, SRA—Rijsbergen, to Human Rights Watch, January 22, 2003.

¹⁵ *Ibid.*

¹⁶ UNHCR Executive Committee Conclusion No.73 (XLIV) – 1993, para. (g) “Recommends that in procedures for the determination of refugee status, asylum seekers who may have suffered sexual violence be treated with particular sensitivity.”

¹⁷ See Aliens Act 2000, art. 29(c). Article 29 of Aliens Act 2000 sets forth the possible categories of protection applicable to asylum seekers in the Netherlands, including refugee status recognition and leave to stay on the basis of humanitarian grounds. One of the changes in the 2000 asylum law is the combining of all forms of asylum-related protection statuses in one article, each status entitling the recipient of protection to the same rights in the Netherlands. See generally Aliens Act 2000, art. 29.

event directly caused him or her to flee, a standard that is all but impossible to meet in practice.¹⁸ Human Rights Watch is concerned that the six-month rule, rigidly applied, does not take into consideration the reality of such traumatic experience or the difficulty that those facing it may have had in fleeing promptly to the Netherlands.

The story of thirty-three-year-old Linda L. from Sierra Leone is an example of this problem. Linda L. arrived in the Netherlands in November 2002. During the AC procedure, she told IND that in 1999 rebels had attacked her village, forcing her to burn her father alive and to join them in pillaging and destroying the rest of the village. She was then brought to the rebel camp where she was given to the colonel as his “wife,” and repeatedly raped and abused over the course of three years. Because she had tried to escape on a number of occasions, the colonel had his name branded into her arm. When in the first half of 2002 she was able to escape to Freetown, she tried to make a life for herself there but soon became the target of people who accused her of being one of the rebels, as evidenced by the colonel’s name burned into her arm. After being attacked and severely beaten by a gang of accusers, Linda L. went to the police. There she was confronted by a police officer whose own brother had died at the hands of the rebels and who refused to take action to protect her. Thereafter Linda L. fled to the Netherlands.¹⁹

IND placed Linda L. in the AC procedure and rejected her application less than three days after she had arrived in the Netherlands on the basis that she had not left Sierra Leone within six months of the traumatic events—her capture by the rebels—for which she may have otherwise received subsidiary protection, further arguing that the marks on her arm were irrelevant because they were not evidence of association with the rebels.²⁰ Linda L.’s lawyer argued that this was clearly a case where additional time to investigate her story and possible consequences of returning her to Sierra Leone (where the rule of law is still fragile and unreliable) was needed. Her lawyer further argued that the Ministry of Foreign Affairs had issued an official notification that ex-rebels or those affiliated with rebels in Sierra Leone may well be the object of discrimination and ostracism. The Ministry had also verified that branding of women as described by Linda L. was commonplace and frequently used as a means to prevent the victims starting a new life elsewhere in Sierra Leone.²¹

Human Rights Watch is concerned that this information in combination with reports of Linda L.’s symptoms of trauma and distress throughout the accelerated procedure were insufficient to persuade IND to transfer Linda L.’s case to the full asylum consideration procedure.

- *The Dutch government should direct IND asylum officers to transfer complex cases requiring additional investigation to the full asylum determination procedure. Cases involving the application of the six-month trauma guideline, questions of “internal flight options,” or other complex interpretative questions, such as whether persecution as a member of a “social group” occurred, should always be transferred.*

¹⁸ See Vreemdelingencirculaire 2000 (Aliens Circular 2000: Aliens Act implementing guidelines), para. C1/4.4.2. An exception to this rule may be made if the applicant establishes a plausible connection between the traumatic event and his or her departure. For an interpretation of this guideline, see Raad van State, decision no. 200202452/1/V1, July 16, 2002. In an interview with Human Rights Watch, representatives of the IND foreigners policy department explained that the six-month-rule is a guideline, but that if an applicant did not leave within six months then the presumption is that he or she could have stayed in the country of origin. In such cases, the burden of proof on the applicant to demonstrate the causal relationship between the traumatic event and subsequent departure is higher. Human Rights Watch interview with senior policy officers, Unit Admission, Immigration Policy Department, Ministry of Justice, The Hague, January 24, 2003.

¹⁹ Human Rights Watch interview with Karin van Herk, *VluchtelingenWerk* (Dutch Refugee Council) (Amsterdam Office), Amsterdam, January 17, 2003. See also, IND decision in the case of Linda L., on file with *VluchtelingenWerk*.

²⁰ Human Rights Watch interview with Karin van Herk, *VluchtelingenWerk* (Dutch Refugee Council) (Amsterdam Office), Amsterdam, January 17, 2003. See also, IND decision in the case of Linda L., on file with *VluchtelingenWerk*. Note that as a matter of policy in such cases, the Dutch authorities would calculate the six-month period from the date when it would have been possible for Linda L. to flee Sierra Leone, not from the moment of her capture.

²¹ See lawyers brief to the court on appeal against IND’s decision not to transfer Linda L.’s case to the full asylum determination procedure. Copy on file with Human Rights Watch. See generally, Human Rights Watch, “*We’ll Kill You if You Cry*”: *Sexual Violence in the Sierra Leone Conflict* (January 2002).

Lack of meaningful access to legal counsel

Dutch law provides for legal assistance to asylum seekers.²² In the AC procedure, lawyers are not present in the interviews, but applicants have the opportunity to see a lawyer between the two interviews and after the second interview. In practice, these consultations are with two different lawyers. The first lawyer has two hours in which to explain the asylum determination procedure to the applicant and to prepare him or her for the second, or substantive, interview with IND. The second lawyer has three hours during which to review the transcripts of the applicant's asylum interview and the IND's intended decision, and to discuss these documents with the applicant.

If the lawyer or applicant wish to respond to IND's intended decision, they must do so within that three-hour period. Otherwise, the intended decision will be taken as final, which can have serious and lasting consequences for the asylum seeker, who effectively loses the opportunity to bring forward information not already disclosed during the AC interviews and to refute IND's determination that the applicant lacks credibility. As one counselor at *VluchtelingenWerk* observed: "If the lawyer is one hour late, the case is lost—their life is lost. I've seen it with real refugees, with terrible cases of torture. In the past the Ministry could take all the time it needed, but now it doesn't matter."²³

Lawyers from the Dutch Bar Association, SRA, and *VluchtelingenWerk* have expressed serious concern about the ability of lawyers to provide meaningful counsel given this tight timeframe. It is particularly difficult where asylum seekers' stories are complex and require additional research or the gathering of evidentiary documentation, such as arrest warrants or local information on conditions in a country of origin. Where an interpreter is required simple communication may consume much of the allotted time. For many asylum seekers it is only when they receive the intended decision and meet their second lawyer for the first time that they begin to understand that this was their asylum determination procedure and that they have three hours to document and make their case. Human Rights Watch believes that this rigid framework of deadlines fails to allow meaningful access to legal counsel and raises serious risks of *refoulement*.

- *Human Rights Watch recommends that the Ministry of Justice explore ways in which asylum seekers' access to lawyers, preferably a single lawyer throughout the process given the speed of accelerated procedures, can be made more flexible so as to allow adequate time for the claim and any appeal to be prepared.*

Accelerated credibility determinations and their impact on asylum seekers' claims

Human Rights Watch is alarmed by reports from *VluchtelingenWerk*, asylum lawyers, and refugee organizations that IND interviewers are placing undue weight on the quality and verifiability of asylum seekers' identification documents and travel route descriptions. These two elements together form the base of the most important hurdle asylum seekers must jump—the assessment of whether they are "credible" in making their asylum claim or whether they are "calculating world citizens" looking for an improvement in their standard of living.²⁴ Under Dutch law and practice, if IND makes the determination that an asylum seeker is not credible during the first part of the AC procedure, the burden of proof for ascertaining relevant facts, which is at first a

²² According to the Dutch legal aid act, legal aid may be granted to asylum seekers who do not have the necessary financial means, so long as the case is concerned with legal matters within the Dutch legal system. See Legal Aid Act of December 23, 1993, art. 12. Although legal aid applicants are normally asked to pay a small contribution toward their representation, asylum seekers are exempt from this policy. *Ibid.*, art. 11(1)(a).

²³ Human Rights Watch interview with Albert Reedijk, *VluchtelingenWerk* (Amsterdam office), Amsterdam, January 17, 2003.

²⁴ See Eduard Nazarski, director of *VluchtelingenWerk*, in *De Volkskrant*, "IND vergeet dat het asielzoekers betreft," November 6, 2002, p. 3, observing that the AC procedure starts from the base assumption that asylum seekers are familiar with and able to maneuver within the asylum system in attempting to gain status to remain in the Netherlands when instead "most are frightened, traumatized people who have been put in the AC procedure."

burden shared between IND and the applicant, shifts to the asylum seeker.²⁵ This makes asylum seekers' task of convincing IND that they should be considered in the full asylum determination procedure much more difficult.

Visa restrictions imposed by the Netherlands, in concert with all E.U. member states, can make it virtually impossible for asylum seekers to travel legally to the Netherlands, leaving smugglers as the only viable route open to many individuals. Asylum seekers who reach the Netherlands through the aid of people-smugglers are very likely to arrive without valid travel documents and are often fearful of telling the authorities about their journey. Regarded with immediate skepticism and suspicion on this basis, they begin the AC procedure with the heavy burden of quickly presenting an overwhelmingly convincing account of their need for asylum, if they wish to stand any chance of being admitted to the full asylum determination procedure. As Eduard Nazarski, director of *VluchtelingenWerk*, points out, with the speed of the AC procedure:

[a]sylum seekers arriving to the Netherlands are really not thinking at that moment about the procedure or the criteria for protection. They are busy thinking about practical things. Where can they wash their underwear? Where can they take a shower? It all goes so fast that they cannot come to peace.²⁶

These sentiments have been echoed by the UNHCR in its authoritative Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook), stating that:

[i]t should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country.²⁷

Asylum lawyers and refugee organizations also report concern about the way in which asylum seekers are expected to present their personal accounts in the AC procedure. Asylum seekers are not permitted to say anything about what happened to them or why they fled to the Netherlands during the first interview, which focuses solely on their identity, nationality, and travel route. They are frequently asked to explain contradictions in their information on these points during the second interview with another IND officer. When, during that second interview, the asylum seeker is asked to tell the interviewer why he or she left his or her country of origin and is seeking asylum in the Netherlands, there is very little guidance as to what type of information the interviewer may be seeking. Instead, the interviewer frequently plays a passive role, "expecting the asylum seeker to bring all relevant information forward, and without contradictions."²⁸ A Dutch asylum law expert at

²⁵ See *Memorie van Toelichting* (Memorandum of Explanation) to Parliament on Article 31(2) of Aliens Act 2000 (art. 29(2)), TK, 1998-1999, 26 732, no. 3, p. 40-41; Human Rights Watch interview with H.P. Schreinemachers, coordinator, Asylum Policy Department, IND, Ministry of Justice, The Hague, January 21, 2003.

²⁶ Eduard Nazarski, director of *VluchtelingenWerk*, in *De Volkskrant*, "IND vergeet dat het asielzoekers betreft," November 6, 2002, p. 3 (unofficial translation).

²⁷ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, UN Doc. HCP/1P/4/Eng/REV.2, 1979, (edited 1992), para. 190. The UNHCR Handbook was prepared at the request of states members of UNHCR's ExCom for the guidance of governments. The Handbook is an authoritative interpretative guide and is treated as such by governments. See Guy Goodwin-Gill, *The Refugee in International Law*, (Oxford: Oxford University Press, 1996), p. 34.

²⁸ Human Rights Watch interview with Wilma Lozowski, lawyer, *VluchtelingenWerk* (headquarters), Amsterdam, December 12, 2002. In a recently published book about the interviewing process in the AC procedure, Nienke Doornbos, researcher at the University of Nijmegen, draws attention to a number of serious communication problems associated with the AC procedure. She notes in particular that there is far too little room for asylum seekers to tell their story given IND's heavy focus on travel route descriptions and identification-related questions and some interviewers' tendency to encourage yes-no and general types of answers to questions rather than fuller, more detailed descriptions of flight motives. In addition, she concluded that the process creates confusion for the asylum seeker as to who is who (e.g. IND, guards, translators, lawyers, and *VluchtelingenWerk* aids) and what their importance to the applicant's asylum request might be, making it practically impossible for lawyers to gain the necessary trust of asylum seekers. This research was partially funded by the IND and based on an in-depth analysis of 138 AC procedure cases taking place between September 1999 and June 2001. See Nienke Doornbos, *De papieren asielzoeker, Institutionele communicatie in de asielprocedure*, ISBN 90-71478-70-X, January 15, 2003.

Amnesty International told Human Rights Watch, “There is no room in the Netherlands for an asylum seeker to be apprehensive or anxious in telling his story.”²⁹

Some applicants also experience difficulties gathering the necessary documentation or evidentiary support for their asylum claims within the short timeframe of the AC procedure, further decreasing their chances of being considered in the full asylum determination procedure. This can occur either because applicants are unaware that they must furnish particular pieces of documentary support until the time of the intended decision, just a few hours before the close of the AC procedure, or because they do not realize the need, or are unable, to produce the type and level of evidentiary proof IND requires in this time period.

In one case, for example, the validity of a young woman’s nationality was in question so the woman asked her sister-in-law, who lived in Belgium, to send a copy of her identity card. This was not considered sufficient to counter concerns about her identity. In the same case, IND questioned whether the woman was a member of a particular political party so the applicant requested and received a letter from the party’s international headquarters based in Belgium. IND concluded that the letter was insufficient proof of membership and did not telephone the party headquarters to further inquire about the applicant and her asylum-related concerns.³⁰ The applicant’s lawyer claimed that had his client been given more time to gather her documentation or had IND followed up on the information she did provide, she might well have met IND’s evidentiary requirements for proof of her identity and political affiliation.³¹

In another case, a young woman from Ethiopia was rejected in the AC procedure in large part because of her failure to produce documentary proof of her identity and the account she gave IND authorities, even though her lawyer informed IND that she had been making serious efforts to obtain these documents from the moment that she was informed that she must do so—one day before the decision against her application was made. When finally the young woman received the documents, it was too late: her court appeal had been rejected and there was no possibility for her to counter IND’s determination that her case lacked credibility.³²

Establishing an applicant’s credibility is an important factor in evaluating an application for asylum, as is the search for objective verification of any asylum seeker’s fears of persecution. Human Rights Watch is concerned, however, that at times IND officials are applying an inappropriately high evidentiary threshold and are failing to refer cases that properly should be examined in detail in the full asylum determination procedure. Dutch practice appears to fly in the face of the following guidance set forth in the UNHCR Handbook:

While the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application....In [cases involving statements not susceptible to proof], if the

²⁹ Human Rights Watch interview with René Bruin, Amnesty International, Amsterdam, December 17, 2002.

³⁰ Email communications from Frans-Willem Verbaas, asylum lawyer, SRA—Noord Oost, to Human Rights Watch, January 10 and 13, 2003; Human Rights Watch telephone interview with Frans-Willem Verbaas, asylum lawyer, SRA—Noord Oost, January 13, 2003.

³¹ *Ibid.*

³² Email communication from Hans Eizenga, asylum lawyer, SRA—Den Bosch, to Human Rights Watch, January 17, 2003. When Nasrine N.’s lawyer filed for a second application for asylum on her behalf, the request was denied because IND had already made a decision based on her account, notwithstanding the fact that she was now in possession of necessary documentation. See the following subsection for more discussion of problems associated with the right to judicial appeal.

applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.³³

- *The Dutch government should direct asylum officers in the AC procedure, when evaluating credibility, to take into account the limited opportunity available to the asylum seeker to present documentary proof and other relevant information.*

Judicial review of cases rejected in the AC procedure

Under Dutch law all asylum seekers whose claims for asylum have been denied have the right to appeal, including those applicants rejected in the AC procedure. According to IND officials with whom Human Rights Watch spoke, judicial review serves as an adequate check against erroneous IND decision making and will catch those cases that should have been referred to the full asylum determination procedure.³⁴

At the same time, however, recent jurisprudence from the Raad van State is narrowing the scope of judicial review. Interpreting article 83 of the Aliens Act 2000, the Raad van State has ruled that, on appeal, asylum seekers are not permitted to bring forward information relating to claims of trauma-related events, torture, or other experiences connected to their alleged fears of persecution unless the events were previously raised with IND; courts may only review the substance of matters that formed part of the original IND decision to reject the application.³⁵

Human Rights Watch has received reports of a number of cases in which asylum applicants who were rejected in the AC procedure have attempted to bring forward on appeal information or evidence relating to rape, torture, arrests, or other issues relevant to their asylum claim that had not been mentioned during the original AC procedure. In several of these cases, the asylum seekers explained their failure to present the information earlier, citing the effects of trauma or inadequate legal advice about the criteria for refugee status. Even so, the Raad van State has reversed a number of lower court decisions that had transferred cases like these to the full asylum determination procedure. The Raad van State reasons that Dutch courts may not assess information that should have been, but was not, earlier brought to the attention of the IND. Consequently, asylum seekers with additional bases for their fear of persecution cannot advance these claims to challenge whether their asylum request should be transferred to the full asylum determination procedure. In such cases, the courts fail to offer a meaningful check against IND error, and the Netherlands runs a very real risk of violating its obligation of *non-refoulement* (that is, not to return a person to a country where his or her life or freedom would be threatened because of persecution).

Hana H. is an example of this type of case. She and her husband applied for asylum in the Netherlands in the spring of 2002 and were both rejected in the AC procedure. On appeal, Hana H. presented the court with a letter that she had written after the AC procedure. In the letter, she told the court that she was raped when she presented herself to the revolutionary court in Iran to give information about her husband, and again some months before fleeing Iran. Her lawyer also submitted to the court a medical examination in support of her story. Hana H. told the court that she had not stated this during her interviews, even when asked by one of the interviewers, because she was ashamed and had not yet told her husband this painful fact. The Raad van State held that, since the woman had not mentioned the rapes during the AC procedure, the letter and medical report could not serve as new evidence warranting re-consideration of Hana H.'s asylum claim. The Court further stated that it seemed plausible and was expected that Hana H. "could have at least mentioned something about her rape" during the AC

³³ UNHCR Handbook, para. 196. See also, paragraph 198 of the Handbook, stating, "A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case." Ibid., para. 198. A number of refugee organizations and asylum lawyers in the Netherlands have expressed concern that the speed of the AC procedure in combination with the manner of interviewing and burden of proof allocated to the applicant in cases where credibility is an issue fails to recognize the difficulties asylum seekers may have immediately trusting the Dutch authorities.

³⁴ Human Rights Watch interview with IND officials, Immigration Policy Department, Ministry of Justice, The Hague, January 24, 2003.

³⁵ See, e.g., Raad van State, decision no. 200202452/1, July 16, 2002.

procedure, especially since a female IND officer had informed the woman that she could, and should, “speak freely.”³⁶

In another case, a young Nigerian woman, who fled her country because of severe domestic violence and threats on her life, appealed against a negative decision on her asylum claim in the AC procedure. On appeal, she told the court that in early 2001, just a few months after the murder of her parents and two siblings during fighting between Muslims and Christians in her village, she was forced to marry an acquaintance of her uncle. Just after the marriage she was forcibly circumcised, which was later followed by severe domestic violence, leading at one point to hospitalization. When she tried to leave the marriage she was threatened with death by her husband as well as her uncle, who cited tribal justification for her death should she choose to leave the marriage. Soon after, she fled to the Netherlands, arriving in April 2002, where she applied for asylum.³⁷

The court of first instance reversed IND’s decision to reject the young woman’s application for consideration in the full asylum determination procedure, ruling that even though she had not mentioned her circumcision or elaborated on the abuse she suffered in her marital life during her initial interviews, the IND should consider this information. This court also overturned the IND’s decision that this young woman was not eligible for consideration under the policy for protection of persons who have suffered severely traumatic events because she had not left Nigeria within six months of her parents’ and siblings’ murder.³⁸ The Raad van State reversed and reinstated the IND’s original negative determination. It ruled that the young woman could have mentioned the circumcision during the AC procedure and that the six-month rule did apply.³⁹

The Raad van State decisions prohibiting courts from considering evidence or claims that may call into question the appropriateness of the AC procedure compound the problems arising from the expedited process. The result is that the Dutch government is unnecessarily increasing the risk that failed asylum seekers may later be deported to countries where their lives or freedom are threatened.

On the issue of torture, the Raad van State has said that even in cases of forced returns to countries where the person may be at risk of cruel, inhuman, or degrading treatment or punishment, in violation of article 3 of the European Convention of Human Rights (ECHR), domestic law on procedure should be respected as a rule.⁴⁰ Although the Raad van State did note that in very special circumstances based on the facts relating to an individual case, an exception to the general rule could apply, the current policy may lead to a violation of the prohibition against refoulement because of the high threshold an applicant must meet before a court may disregard the procedural rule.⁴¹

In addition to the jurisprudence discussed above, the *Raad van State* held in November 2002 that the review of cases rejected in the AC procedure should be limited and courts should assess only the “reasonableness” of the IND’s decision, especially with regard to the assessment of an applicant’s credibility, rather than examining the

³⁶ Raad van State, decision no. 200202610/1, June 28, 2002.

³⁷ Human Rights Watch telephone interview with Gerben Kor, asylum lawyer and researcher, *Vrije Universiteit*, Amsterdam, December 13, 2002. See also Haarlem district court, decision no. AWB 02/28867, April 25, 2002.

³⁸ Human Rights Watch telephone interview with Gerben Kor, asylum lawyer and researcher, *Vrije Universiteit*, Amsterdam, December 13, 2002. See also Haarlem district court, decision no. AWB 02/28867, April 25, 2002.

³⁹ Raad van State, decision no. 200202452/1, July 16, 2002.

⁴⁰ Raad van State, decision no. JV 2002/125, March 5, 2002.

⁴¹ Rights groups based in the Netherlands have expressed similar concern. See, e.g., discussion in a letter dated May 8, 2002 from Amnesty International to the leader of the Permanent Committee on Justice of the Dutch Parliament. Refugee organizations and asylum lawyers have also expressed serious concern that the ability for rejected asylum seekers to repair the damage done by an inadequate determination procedure and judicial review is extremely limited due to the Raad van State’s interpretation of what constitutes new information or changed circumstances for the purpose of filing a new asylum application. Human Rights Watch interview with Dominique van Huijstee, lawyer, *Het Amsterdams Solidariteits Komitee Vluchtelingen / Steunpunt Vluchtelingen (ASKV)*, Amsterdam, November 21, 2002; Human Rights Watch telephone interview with Frans Willem Verbaas, asylum lawyer, SRA—Noord Oost, December 9, 2002; Human Rights Watch interview with Marcelle Reneman, policy officer, *VluchtelingenWerk* (headquarters), Amsterdam, January 9, 2003.

merits of the case.⁴² This decision may have the effect of limiting further the judicial check on IND's decisions about which cases are admitted to the full asylum determination procedure.

Human Rights Watch is concerned that asylum seekers are being denied a meaningful review of their asylum decisions due to the constraints placed upon judicial review in the Netherlands. Where individuals are returned to their countries of origin in violation of the non-refoulement provision of the Refugee Convention⁴³ or article 3 of the ECHR,⁴⁴ the denial of an effective remedy for a violation of human rights might also violate article 13 of the ECHR.⁴⁵ A genuine opportunity to appeal implies more than a perfunctory examination of the law and a hands-off approach on assessment of credibility and review of the merits.

In sum, in the Netherlands, courts now bar asylum seekers from bringing forward on appeal any facts or circumstances not relating to those mentioned during the forty-eight-hour AC procedure. Another rule of Dutch asylum law prohibits the lodging of a new claim unless circumstances in the country of origin have changed since the earlier claim was lodged. Together, these rules in many cases effectively prevent substantive consideration of what could be very critical information about an asylum seeker's reasons for fearing return to his or her country of origin. Denial of a meaningful appeal opportunity is particularly egregious where it follows such an excessively accelerated procedure as the Netherlands' AC procedure and where the government itself justifies the very broad use of the AC procedure by reference to the fact that appeal is available to catch any mistakes.

- *Human Rights Watch recommends that the government of the Netherlands take urgent steps to ensure that every asylum seeker is provided an adequate opportunity to present their claim for asylum, and that judicial review ensures that the merits of the case have been fairly examined.*

TREATMENT OF MIGRANT CHILDREN IN ASYLUM AND IMMIGRATION PROCEDURES

Every year tens of thousands of migrant children,⁴⁶ both accompanied and unaccompanied, make their way to Western Europe where they seek refuge and protection. The number of unaccompanied children arriving in the Netherlands steadily increased throughout the 1990's, peaking at almost 7,000 arrivals in the year 2000.

⁴² Raad van State, decision no. 200205522/1, November 15, 2002. In interviews with Human Rights Watch, academics, lawyers, and refugee organizations voiced their concerns about the effect of such a decision. Human Rights Watch interview with Thomas Spijkerboer, professor and researcher, *Vrije Universiteit*, Amsterdam, December 13, 2002; Human Rights Watch telephone interview with Gerben Kor, asylum lawyer and researcher, *Vrije Universiteit*, Amsterdam, December 13, 2002; Human Rights Watch interview with René Bruin, Amnesty International, Amsterdam, December 17, 2002.

⁴³ Refugee Convention, art. 33.

⁴⁴ ECHR, art. 3.

⁴⁵ See e.g., ECHR, *Jabari v. Turkey*, application no. 40035/98, July 11, 2000, holding:

[G]iven the irreversible nature of the harm that [G] might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim....The Court recalls that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief.

Ibid., paras. 48 and 49. In that case, an Iranian woman accused of adultery was at risk of being deported to Iran where she was likely to suffer torture or ill-treatment. On consideration of her application for judicial review on her asylum claim, which had been denied on procedural grounds, the presiding court had limited itself to a review of the issue of "the formal legality of the applicant's deportation rather than the more compelling question of the substance of her fears." *Ibid.*, para. 40.

⁴⁶ The term "migrant children" is used here to include asylum-seeking children who may subsequently be recognized as refugees.

In recent years, however, these numbers have been in rapid decline, with reports by late 2002 and early 2003 indicating that the number of unaccompanied children seeking asylum is one-third to one-half less than in 2000. The Dutch authorities, as well as lawyers and organizations working with migrant children, attribute this decline to the “success” of the most recent Aliens Act and the new policies for unaccompanied children that came into effect in January and November 2001.⁴⁷

It is clear that the Netherlands has been successful in discouraging the arrival of migrant children and in limiting the number of temporary residence permits granted to unaccompanied minor children. It is far less clear, however, whether this perceived success has been accomplished in accordance with the Netherlands’ international and regional human rights obligations. Rather, it appears that the new policies, as implemented, violate international children’s rights standards.

Human Rights Watch’s investigation revealed that children’s basic rights are frequently ignored or considered inapplicable during the consideration of their asylum and immigration applications. Particular concerns include: adversarial asylum interviews, frequently conducted without the presence of a lawyer or guardian, and often failing to take into account the impact of trauma and children’s less developed cognitive ability to present a structured narrative to support their asylum claim; and an inappropriately broad definition of an “accompanied” child under Dutch law.

Applicable international standards

The Convention on the Rights of the Child, which the Netherlands ratified in 1995, establishes that every child is entitled to special care and protection and that the best interests of the child must be a primary consideration in all actions and administrative decisions affecting the child. States have a positive obligation to protect all children within their jurisdiction against abuse, neglect, and exploitation and to ensure that children enjoy an adequate standard of living for their physical, mental, spiritual, moral, or social development.⁴⁸ States may not discriminate in the provision of the Convention’s rights and protections and must take all appropriate measures to ensure that children are protected from discrimination based, among other things, on the immigration status of the child’s parents, legal guardians, or family members.⁴⁹

Notwithstanding these international standards, the Raad van State has held that the rights embodied in the Convention on the Rights of the Child are not applicable to children whose parents have no right to remain in the

⁴⁷ Aliens Act 2000, arts. 14, 28 and 29; Aliens Decree 2000, para. 3.56; TK, 1999-2000, 27 062, no. 1-2 [March 2000 policy paper on unaccompanied minors to Parliament, effective January 4, 2001. See Tussentijds Bericht Vreemdelingen-circulaire (TBV) (implementing guidelines), 2000, no. 30.]; TK, 2001, 27 062, no. 14 [May 2001 policy paper on unaccompanied minors to Parliament, effective November 2001. See TBV 2001, no. 33 and TBV 2001, no. 34.]

⁴⁸ Convention on the Rights of the Child, *adopted* November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990), arts. 2, 3, 19, 27, 32, 34, and 36. Article 2(1) of the Convention states that states “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” [emphasis added]. *Ibid.*, art. 2(1). Article 39 of the Convention requires states to take all appropriate measures to promote the rehabilitation of children who are victims of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts,” and to do so “in an environment which fosters the health, self-respect and dignity of the child.” *Ibid.*, art. 39.

⁴⁹ *Ibid.*, art. 2. The Netherlands has also ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention Relating to the Status of Refugees, all of which set forth state responsibility for the protection of all children within their borders. The Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms also establish relevant regional standards for the Netherlands’ treatment of migrant children.

Netherlands.⁵⁰ In so holding, the Court has set a dangerous precedent, and has opened the way to lower court decisions that such children are not entitled to any secondary rights deriving from core Convention rights.⁵¹ At least one court has also ruled that the Raad van State's analysis applies to children who are in the Netherlands with an adult sibling who has no legal status, regardless of the sibling's legal responsibility or willingness to care for the child.⁵² Children who fall into one of these categories do not have the right in law to request state protection on the basis of the Convention, even with regard to basic care such as shelter and food.

Human Rights Watch is deeply concerned with the Dutch courts' current interpretation of the applicability of the Convention on the Rights of the Child. Without derogating from its international obligations, the Netherlands cannot simply ignore its international and regional obligations to protect and care for migrant children in its territory.

- *The Dutch government should make clear to all officials that the Convention on the Rights of the Child and other relevant international and regional instruments mandating minimum standards for the treatment of all children are applicable to migrant children regardless of their legal status.*

Asylum determination procedures involving children

Asylum applications from children must be considered in light of the international and regional obligations for the protection of children highlighted above, as well as the specific standards and guidelines set forth in the United Nations High Commissioner for Refugees' Guidelines on the Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (UNHCR Guidelines) and the UNHCR Handbook. In addition, the European Union (E.U.) Council Resolution of June 26, 1997 on unaccompanied children who are nationals of third countries (Council Resolution) is authoritative in that it articulates the common E.U. position on the treatment of unaccompanied non-national children in E.U. Member States.⁵³

The overriding principle reflected in international norms regarding asylum cases involving children is that they are children first, and then asylum seekers. State authorities must conduct all proceedings in such cases in a spirit that reflects consideration and respect for the best interests of the child. While children have a right to participate in proceedings and to express their views, it is critical that authorities view this information "in accordance with the age and maturity of the child."⁵⁴

This is especially true in the case of unaccompanied children, who do not have the benefit of adults willing and able to advocate on their behalf. Paragraph 8.6 of the UNHCR Guidelines instructs officials making asylum determinations that:

⁵⁰ Raad van State, decision no. 200106218/1, para. 2.4.1., February 5, 2002, holding, "[h]et verdrag inzake de rechten van het kind roept, voor zover al rechtstreeks toepasselijk, geen aanspraken in het leven voor kinderen wier ouders op grond van de Nederlandse vreemdelingenwet en regelgeving geen verblijf wordt toegestaan." ["The Convention on the Rights of the Child does not, as far as it is applicable, create any rights/claims for children whose parents, on the basis of the Dutch foreigners law, are not permitted to stay [in the Netherlands]."] [unofficial translation] See also, Raad van State, decision no. 200206781/1, February 12, 2003; Raad van State, decision no. 200101904/1, October 10, 2001; Raad van State, decision no. 200000654/1, September 15, 2000.

⁵¹ See, e.g., Arnhem district court, AWB 02/70407 and AWB 02/79413, para. 7, October 18, 2002.

⁵² Ibid. In this case, two Angolan siblings (a boy and a girl) came alone to the Netherlands. After a bone scan examination IND determined that the eldest was eighteen years old and therefore an adult. IND rejected both applications for asylum, denying the two any form of state-based assistance in light of their illegal presence in the Netherlands. The younger sibling's lawyer appealed to the court for basic shelter and subsistence rights on the basis of his being a child entitled to state protection under the Convention of the Rights of the Child. The Arnhem court rejected the appeal.

⁵³ See generally Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, 397Y0719(02), *Official Journal of the European Communities*, C 221, 19 July 1997 [Council Resolution on unaccompanied minors]. Many of the guidelines set forth in this Resolution were derived from the Dutch model for dealing with unaccompanied children in the 1990's. The government's two most recent policy papers setting forth the standards for dealing with unaccompanied children in the Netherlands also reference both the Council Resolution and the UNHCR Guidelines. See TK 27 062, no. 2, at 2; TK 27 062, no. 14, at 3.

⁵⁴ See Convention on the Rights of the Child, art. 12. See also Council Resolution, art. 4(6).

Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability. Children may manifest their fears in ways different from adults.⁵⁵

Human Rights Watch's investigation revealed that Dutch asylum and immigration policy and practice fail to comply with a number of these standards. In some cases involving children, IND officials seem to have completely neglected the fact that they are dealing with children.

More than 30 percent of unaccompanied children are dealt with via the AC procedure.⁵⁶ The AC procedure by its nature is unlikely to ensure that unaccompanied children's special characteristics and needs are taken into account. Given the special vulnerability of children and the state's obligation to protect them and to act in their best interests, Human Rights Watch believes that unaccompanied children's asylum claims should under no circumstances be processed via the accelerated procedure. In cases where children are accompanied by their parents or another adult who is their legal or customary caregiver, the child's request for refugee status should be dealt with as part of the parents' application for asylum unless the child has a distinct fear of persecution and wishes to lodge a separate claim on those grounds. No children should be interviewed immediately after arriving in the Netherlands; children need and should have time to adjust to being in a new environment.⁵⁷

- *Human Rights Watch urges the Dutch government to amend asylum law and policy so that unaccompanied children are always dealt with in the full asylum determination procedure.*
- *In cases where children have arrived as part of a "child family" and IND subsequently determines that the eldest sibling is an adult, the younger children's applications should be dealt with as part of the adult sibling's application if IND makes the determination that the children are "accompanied" and that the adult sibling is willing and able to speak on their behalf, as would be the case in applications involving parents arriving with children.*

Even when children have access to full asylum determination procedures, the way in which they are interviewed may result in arbitrary denial of legitimate asylum claims. Child asylum seekers are frequently interviewed in the absence of a lawyer or guardian capable of helping to protect their best interests throughout the procedure. In practice, several different adults play a role in guiding children through the asylum procedure. At the start, a representative of *VluchtelingenWerk* typically prepares child asylum seekers for the asylum determination process, explaining how the procedure will work and what will be expected of them. Because the representative is the *VluchtelingenWerk* representative on duty that day, a child may be assisted by more than one

⁵⁵ UNHCR Guidelines, para. 8.6. See also Council Resolution, art. 4(6).

⁵⁶ This figure includes children who arrive with an older sibling who is later determined to be an adult. In cases where a child's age is in question, IND sends the child for a bone scan examination as part of the accelerated asylum determination procedure. In June 2002, IND began requesting examinations for determination of whether children are above the age of fifteen in addition to general determination of adulthood versus childhood. The National Ombudsman, *VluchtelingenWerk*, asylum lawyers, doctors, and medical researchers in the Netherlands have voiced serious concern about the reliability of these scans and the current lack of transparency with which the examinations are carried out. Human Rights Watch interview with J. de Bruijn, head of the research department, National Ombudsman, The Hague, January 3, 2003; Human Rights Watch interview with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), Amsterdam, January 9, 2003; email communication from Mark Leijen, lawyer, Leijen Nandoe Kuter & Schoorl, to Human Rights Watch, January 24, 2003.

⁵⁷ When the May 2001 policy was proposed, the UNHCR office in the Netherlands expressed its concern that the new policy was drafted such that asylum requests of unaccompanied minors could be channeled through the accelerated determination procedure. See UNHCR letter to the Dutch Parliament, commenting on the new policy proposal of the Ministry of Justice concerning unaccompanied minor asylum seekers, June 11, 2001.

representative, depending on when the child applies for asylum and is scheduled for interviews. There is no requirement that the *VluchtelingenWerk* representative be present during the interviews.⁵⁸

In cases involving unaccompanied children, the child protection agency NIDOS appoints a guardian after the first interview.⁵⁹ The guardian is then responsible for managing the child's case. Although NIDOS is officially tasked with providing these children legal assistance, and NIDOS guardians must consent before children under twelve are permitted to apply for asylum, guardians are not trained in asylum law or policy. Moreover, guardians only attend IND interviews with children in cases in which it appears that the child is traumatized or otherwise in need of special support, and then frequently the guardian only observes the interview through a video monitor. As with adults, lawyers are almost never present during IND interviews with children. Indeed, lawyers are usually only appointed after the child has gone through the IND interviewing process. Lawyers have reported that even in cases in which they were appointed before the interview, they were not given adequate notice of the interview date and time.⁶⁰ Human Rights Watch is concerned that having several different adults play an advisory role during a child's asylum procedure hampers the building of necessary trust between a child and those persons designated to bring his or her best interests to the fore.

- *Human Rights Watch recommends that the Dutch government establish a new policy for interviews with children so that children are supported by a single person, whether a representative of VluchtelingenWerk, a guardian, or a lawyer, throughout the asylum process. The person appointed to the child's case should be appointed from the beginning of the case and be available to support the child through all stages of his or her asylum application; IND interviews should not take place in the absence of this person.*

Human Rights Watch has also received reports that child interviews are at times too shallow to fully evaluate a child's claim for asylum. As an example, Mahdi M., a five-year-old Somali boy who showed signs of severe malnutrition and trauma, had an interview for asylum that lasted about two hours and was not conducted in the presence of a lawyer. According to his lawyer and guardian, IND officials focused primarily on gathering information about where he was from, doing little to assess possible grounds for asylum or leave to stay on the basis of humanitarian grounds. Rather, they made a quick determination that Mahdi M. was too young to have participated in political activities and was therefore unlikely to be the subject of persecution. Although Mahdi M. was too young to be able to tell IND very much about his experiences and why they might relate to asylum or other grounds for leave to stay in the Netherlands, he did tell IND that he had lived with his mother in Somalia where they experienced a lot of violence, had little to eat, and could not safely go out onto the street. He told them that his father is dead and his mother terminally ill. When he began to tell IND about an event that had happened to him and his mother, he broke down in tears and was unable to continue. Instead of further interviewing the five-year-old about his experience or ensuring that he was referred for a psychological evaluation and support, IND concluded that Mahdi M. did not meet the Dutch law's criteria for either recognition as a refugee or leave to stay on the basis of humanitarian circumstances.⁶¹

Mahdi M.'s lawyer told Human Rights Watch that in her opinion the boy's tears and overall appearance, especially in light of his young age, should have indicated to IND a need to delve more deeply into the possibility

⁵⁸ Human Rights Watch telephone interview with Stefan Kok, asylum policy worker, *VluchtelingenWerk* (headquarters), February 17, 2003.

⁵⁹ NIDOS is the child protection agency responsible for providing all unaccompanied children with a guardian. NIDOS is an independent child and family protection institution recognized by the Dutch government. NIDOS' main role is providing care to all unaccompanied children whose asylum claims have been denied (*ama's*) until they reach the age of eighteen. NIDOS arranges for an accommodation and financial support based on the needs of the *ama's* under their care.

⁶⁰ Human Rights Watch interviews with asylum lawyers, January 2003; Human Rights Watch telephone interview with Stefan Kok, asylum policy worker, *VluchtelingenWerk* (headquarters), February 17, 2003; Human Rights Watch interview with Yvon Zwetsloot, legal department, NIDOS Jeugdbescherming voor vluchtelingen (NIDOS), Utrecht, January 27, 2003.

⁶¹ Human Rights Watch telephone interview with Hilda Zwarts, lawyer, SRA, January 28, 2003; Human Rights Watch telephone interview with Mahdi M.'s guardian, February 17, 2003.

of trauma-related experiences. IND made no mention of possible trauma-related experiences in their decision denying Mahdi M. asylum.⁶²

The present method of questioning children and determining their credibility also raises questions about whether interviewers are assessing children's applications properly in light of these applicants' age and maturity. As a representative from the legal department of NIDOS, the organization responsible for guardianship of unaccompanied children in the Netherlands, points out:

The problem for us is the way IND weighs what children say; they use adult standards. Children of five, six, eight years old who know nothing are interviewed and then IND concludes that they are not credible and therefore cannot benefit from the unaccompanied minors permit.⁶³

In an interview with Human Rights Watch, *VluchtelingenWerk* expressed similar concerns about IND's tendency to challenge credibility by looking for gaps or inconsistencies in the statements of young children without allowing for the age and maturity of the child involved. *VluchtelingenWerk* lawyers also told Human Rights Watch that in their opinion IND officials spend far too little time actually investigating and evaluating the substance of the children's asylum claims, instead focusing on little details meant to determine credibility and travel route descriptions that mean little to the child being interviewed.⁶⁴

Human Rights Watch has received reports of a number of cases in which IND was extremely quick to conclude that the child being interviewed lacked credibility or was being "silent and uncooperative" or otherwise withholding information. In one case, for instance, Dutch asylum and immigration officials interviewed two young unaccompanied brothers from Angola—aged eight and thirteen—whose father had been murdered and whose mother had recently died in a refugee camp. The interviewer concluded after meeting with the eight-year-old that his application for asylum lacked credibility and that because the boy was "frustrating a possible inquiry into care options in his country of origin," he should not be granted a permit for unaccompanied children, even pending further investigation into repatriation options. This child was only two years old at the beginning of the time period about which he was being questioned and understandably had difficulty presenting the type of detailed, verifiable information expected of an adult asylum seeker.⁶⁵

His thirteen-year-old brother faced similar hurdles in being taken seriously and treated in an age-appropriate manner. During his interview, for example, he was asked repeatedly why his father had chosen for the family to live in a particular part of the country. (IND believed this location indicated that the family could not have been at risk of persecution). He was unable to answer, which is unsurprising given that the child was only eight at the time that this decision was made for him. Nonetheless, the child's inability to answer served as one of the grounds for IND's establishing his lack of credibility—a primary reason for IND's determination that the child should not be granted refugee status or a temporary permit for stay under the unaccompanied children's policy.⁶⁶

In other cases involving more than one unaccompanied child from the same family, or children who came as part of a "child family," IND officials appear to be cross-referencing the information they receive in interviews with younger siblings as a means of assessing the credibility of the whole family's application for asylum. For instance, in the case of the Beye family from Angola, IND officials interviewed the three youngest siblings who were aged five, seven, and ten even though their lawyer had petitioned that they not be interviewed because the eldest sibling, a twenty-one-year-old brother, could tell their story on their behalf. On the basis of these

⁶² Human Rights Watch telephone interview with Hilda Zwarts, lawyer, SRA, January 28, 2003; Human Rights Watch telephone interview with Mahdi M.'s guardian, February 17, 2003.

⁶³ Human Rights Watch interview with Yvon Zwetsloot, legal department, NIDOS, Utrecht, January 27, 2003.

⁶⁴ Human Rights Watch interviews with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), Amsterdam, December 12, 2002 and January 9, 2003.

⁶⁵ IND intended decision, lawyer's brief in response to IND's intended decision, and IND decision. Documents on file with Human Rights Watch.

⁶⁶ IND intended decision, lawyer's brief in response to IND's intended decision, and IND decision. Documents on file with Human Rights Watch.

interviews IND concluded that the children and their brother should not be granted an asylum permit because their story lacked credibility. Some of the reasons for this determination included:

- the ten-year-old child could not remember the names of the men in Angola who beat him and made him steal things and take drugs;
- the seven-year-old brother mentioned a best friend in the first interview but stated in the second interview that he did not have friends and only played with his little brother;
- the five-year-old said during the first interview that he had traveled by plane with his brothers and mother, but failed to mention his mother in the second interview;
- the seven-year-old said he had lived in the same house his entire life but the eldest brother said the family had been moved to a UNITA camp six years ago; and
- the drawings the children were asked to make of their house in Angola differed.⁶⁷

The children's lawyer told Human Rights Watch that she could find no reason for having interviewed the three young siblings other than to "create contradictions in their stories to be able to deny the family a residence permit."⁶⁸ She further expressed her amazement that:

[o]n the one hand the IND stipulates that children younger than twelve cannot sign their own asylum applications because they do not know, even to a certain extent, what is in their best interests, but on the other hand expects them to do interviews and give correct and full details.⁶⁹

In the case of four-year-old Wesley W., IND officials interviewed him separately despite the fact that he had arrived in the Netherlands with an aunt, who had applied for asylum and whose story IND intended to take into account in assessing the child's claim. After interviewing the four-year-old, the interviewer concluded that he had not sufficiently cooperated in providing details about his travel route to the Netherlands and further lacked credibility because he failed to provide documents with which his identity and nationality could be confirmed.⁷⁰

The combination of problems associated with IND's interviewing of children highlighted above has led *VluchtelingenWerk*, NIDOS, SRA, and the Dutch Bar Association to consider taking a formal policy stand against IND's interviewing asylum seeking children under twelve, until IND has revised its policies for conducting and evaluating such interviews.⁷¹ Moreover, in March 2003, NIDOS informed IND that it would no longer co-sign asylum applications for children under twelve or otherwise support the interviewing of young children.⁷² IND responded by temporarily suspending interviews with unaccompanied children under twelve, pending independent evaluations of the interview process by NIDOS, IND, SRA, and *VluchtelingenWerk*.⁷³ In late March 2003, however, IND resumed interviews of children under twelve years of age in cases in which NIDOS'

⁶⁷ Email communication from Anne Louwse, lawyer, Hamerslag & van Haren Advocaten, to Human Rights Watch, January 24, 2003.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Transcripts of IND interviews and IND intended decision. Documents on file with Human Rights Watch.

⁷¹ Human Rights Watch telephone interviews with SRA lawyers, January-February 2003; Human Rights Watch telephone interview with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), February 17, 2003; Human Rights Watch telephone interview with Yvon Zwetsloot, legal department, NIDOS, February 18, 2003; Human Rights Watch telephone interview with Hans Eizenga, lawyer, SRA—Den Bosch, February 20, 2003.

⁷² Human Rights Watch telephone interview with Yvon Zwetsloot, legal department, NIDOS, March 21, 2003.

⁷³ Human Rights Watch telephone interview with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), March 18, 2003; Human Rights Watch telephone interview with Yvon Zwetsloot, legal department, NIDOS, March 21, 2003.

signature on the asylum application is not required (such as in cases where children are found to have extended family in the Netherlands).⁷⁴

Human Rights Watch is concerned that Dutch asylum and immigration officials are unnecessarily interviewing very young children without appropriate consideration of their age, maturity, or particular circumstances. We are further concerned that IND officials in some cases erroneously conclude that children are obstructing an investigation or lack credibility on the basis of these flawed interviews. It is inappropriate to burden children with an adult standard for assessing credibility and proof or to conclude that a child's failure to provide information implies an attempt to frustrate an investigation or otherwise deceive IND authorities.

Human Rights Watch urges the Dutch government to address these serious concerns about child interviews. In particular, we recommend the following:

- *The Dutch government should, as a matter of urgency, develop guidelines for asylum interviews of children that ensure that IND authorities assess these applications in light of the child's age and maturity.*
- *IND should discontinue the practice of unnecessarily interviewing young children, particularly in cases where a lawyer or state-appointed guardian familiar with asylum law is not present during the interviews. Separate interviews with young children should be conducted only when the child has a distinct fear of persecution and needs to lodge his or her own application on this basis. Where multiple children in a family are interviewed, officials should not place undue emphasis on minor inconsistencies in assessing credibility.*

The determination that a child is accompanied

If an asylum-seeking child's application for asylum is denied, Dutch law then categorizes the child as a child migrant, distinguishing between those considered "accompanied" ("bamas": *begeleide alleenstaande minderjarige asielzoekers*) or "unaccompanied" ("amas": *alleenstaande minderjarige asielzoekers*) by an adult.⁷⁵ If it is determined that a child is accompanied, the responsibility to repatriate the child and ensure that he or she is adequately cared for in his or her country of origin or in another country transfers from the Dutch state to the identified adult(s). The implementing guidelines further clarify that it can be expected that the adult(s) will either accompany the child back to the country of origin or another safe country with the goal of providing ongoing shelter, guidance, and care; or arrange for another alternative for the child's accommodation and care outside the Netherlands.⁷⁶ Guidelines for the implementation of Aliens Act 2000 provide that a residence permit for unaccompanied children ("ama permit") shall only be given when a child's application for asylum is rejected and there are no adequate reception options in the child's home country or elsewhere. In practice, once a child's application for asylum is denied, IND makes a determination as to whether the child is accompanied or not and as such whether an ama permit should be granted.⁷⁷

The UNHCR defines "unaccompanied children" as persons under eighteen years of age who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so. UNHCR uses the term "separated children" to refer to persons under eighteen years of age who are separated from both parents or from their previous legal or customary primary caregiver, noting that "[s]uch children,

⁷⁴ Human Rights Watch telephone interview with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), March 24, 2003.

⁷⁵ See Aliens Act 2000, art. 14.

⁷⁶ Aliens Circular 2000, C2/7, para. 10.1 and 10.2.

⁷⁷ See Aliens Decree 2000, para. 3.56.

although living with extended family members, may face risks similar to those encountered by unaccompanied children.”⁷⁸

The UNHCR Guidelines on unaccompanied children further provide: “Where a child is not with his/her parents ... then s/he will be, *prima facie*, unaccompanied.” In cases where children are accompanied by adults other than their parents or legal guardians, the Guidelines recommend the need for an evaluation of the “quality and durability of the relationship” between the child and the adult before setting aside the presumption that the child is unaccompanied. It is critical, for example, that the adult or caregiver in question have the “maturity, commitment and expertise” to adequately assume the responsibilities for the upbringing and development of the child.⁷⁹

In contrast, the Dutch definition of accompanied children encompasses children who have any family member within four degrees of relation, such as a sibling, an aunt or uncle, a cousin, or a grandparent, in the Netherlands. This adult does not have to have arrived with the child, nor does his or her immigration status or familiarity with the child have any impact on whether the child is deemed to be “accompanied.”⁸⁰

Human Rights Watch is concerned that the Dutch definition of accompanied children is overly broad and in violation of international and regional standards. Our research reveals that IND applies its definition in a manner that fails to take into account what should be the overriding principle in cases involving children—their best interests—and without regard to the potential consequences of such summary decision-making.

Five-year-old Mahdi M., the Somali boy whose case is discussed above, is a typical case of a child wrongly classed as an accompanied minor (“bama”). In his case, the authorities determined from the start of his asylum procedure that he was accompanied because his maternal aunt was living in the Netherlands. Since Mahdi M. was considered too young to be a refugee, the IND ruled that he was the responsibility of his aunt. This means that his aunt—who is legally living in the Netherlands on the basis of her own asylum request—is responsible for tracing his mother, even though no one knows where she is or how to contact her, and for returning Mahdi M. to Somalia.⁸¹ If the mother is not found, Mahdi M.’s aunt has a choice to make: she can either give up her life in the Netherlands to return with five-year-old Mahdi M. to Somalia to raise him or she can let Mahdi M. stay illegally with her in the Netherlands, knowing that he may remain forever undocumented.

In contrast, had the authorities determined that Mahdi M. was unaccompanied—since he did not arrive with and is still not being cared for by a parent or another person who has committed to his long-term guardianship and care—Mahdi M. would have been granted a temporary residence permit on the basis of his unaccompanied status pending the authorities’ investigation into repatriation options (*ama* permit).⁸² This permit would have enabled Mahdi M. to access the full set of rights that Dutch children enjoy and have protected him from living in an undocumented state year after year. If after three years Mahdi M. still could not be returned to a safe and suitable living situation in Somalia, he would be granted a permanent residence permit, enabling him to apply for naturalization.

While in many cases the best interests of the child might be served by placement with relatives and provision of a temporary residence permit legalizing his stay in the Netherlands pending repatriation, unfortunately, there is

⁷⁸ See *Protection and Assistance to Unaccompanied and Separated Refugee Children: Report of the Secretary-General*, para. 3, U.N. General Assembly, 56th sess., provisional agenda item 126, U.N. Doc. A/56/333 (September 7, 2001). The Council of the European Union has also defined unaccompanied children as persons under eighteen years of age who are “unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person.” Council Resolution on unaccompanied minors, art. 1(1). See also Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers, at art. 2(h).

⁷⁹ UNHCR Guidelines, Annex II, paras. 2, 5, and 8.

⁸⁰ Aliens Circular 2000, C2/7, paras. 1.3 and 10.1.

⁸¹ Human Rights Watch telephone interview with Hilda Zwarts, lawyer, SRA, January 28, 2003; Human Rights Watch telephone interview with Mahdi M.’s guardian, February 17, 2003.

⁸² See paragraph 3.56 of the Aliens Decree 2000.

no such combination of options in the Netherlands. Placement with extended family or those most likely to share cultural and linguistic links with the child only happens when the child is deemed “accompanied” and therefore not eligible for a temporary residence permit or for help from the authorities in terms of family tracing and repatriation options. It is precisely this situation that has led NIDOS to conclude that:

Accompanied minors (“bamas”) put us in a very awkward position. We are asked—forced—to choose between legal status and the best interests of the child in light of family placement options. If the consequence of putting a child with an aunt or uncle is that the child becomes a rejected asylum seeker with no options for documentation then it makes it even harder for us to place the child. In that case there are no family reunification or legalization options because the child would have to apply from her country of origin and in any case a fourth degree relation would have no right to request such reunification.⁸³

NIDOS has also expressed concern that apart from the asylum process, there is no separate hearing to assess the best interests of the child and determine whether a child is accompanied. According to IND, the best interests of the child standard are taken into account during the asylum interview so it is unnecessary to have a separate determination on this matter or on placement options.⁸⁴ Lawyers from *VluchtelingenWerk* argue:

If the uncle, for example, cannot get the child back to his or her country of origin then the child is simply lost here and open to exploitation. And more than that, the adults who are often given this responsibility for return and care are refugees themselves or otherwise unequipped to deal with this sudden unasked-for responsibility.⁸⁵

A child who is capable of forming his or her own views has the right, according to article 12(2) of the Convention on the Rights of the Child, to have these views heard and taken into account in all matters affecting him or her. Nonetheless, there is no evidence that these views are being adequately heard and considered in connection with the government determinations that a child is “accompanied” by a particular adult relative.⁸⁶ Even in cases where the identified adult has stated that he or she is unwilling to take responsibility for the care and protection of the child, the child is still considered accompanied. The only possibility for changing this presumption of being accompanied is for the NIDOS-appointed guardian to demonstrate in a separate appeal that the child’s best interests are damaged by placement with the identified adult.⁸⁷

In a recent case involving three children under the age of thirteen, IND determined that the children were accompanied because of the presence of an aunt and uncle in the Netherlands. The agency concluded therefore that the children were not entitled to ama permits. IND apparently discounted the fact that the children had never had contact with either the aunt or the uncle and that the couple are now Dutch nationals who do not plan to return to Angola, particularly not for the purpose of raising these three children. In response to a query from the lawyer of the children concerning IND’s failure to assess what was in their best interests and whether the aunt and uncle were willing or able to care for these children, IND wrote:

The policy does not assume that there is a legal obligation to take care of the child. What we are dealing with is the responsibility and the obligation to make an effort to guide and care. This could also mean that the care takes place somewhere else. When there is at least one adult in the Netherlands that can offer this guidance or care, this person carries the responsibility to assure that the minor will be appropriately received in the country of origin or another country where she

⁸³ Human Rights Watch interview with Yvon Zwetsloot, legal department, NIDOS, Utrecht, January 27, 2003.

⁸⁴ Human Rights Watch interview with H.P. Schreinemachers, coordinator, and Mark Kiela, senior policy officer, Asylum Policy Division, IND, Ministry of Justice, The Hague, January 21, 2003.

⁸⁵ Human Rights Watch interview with Wilma Lozowski, policy officer, *VluchtelingenWerk* (headquarters), Amsterdam, December 12, 2002.

⁸⁶ Convention on the Rights of the Child, art. 12(2).

⁸⁷ See TBV 2001, 33 in combination with Aliens Circular 2000, C2/7.10.1.

could reasonably go. In principle, the Dutch government does not have a role to play in this. As far as the argument that the uncle and aunt of the asylum seeker are not able to provide the guidance or care in the country of origin and therefore that the asylum seeker should be seen as unaccompanied it should be noted that even when the adult in question is not a good caretaker or when he or she has not undertaken the daily care of the child this still does not mean that she or he cannot be expected to take the responsibility for the return to and the care of the child in the country of origin or another country where she could feasibly go. Having said this, the uncle and the aunt in the event that they cannot or are not willing to take care of the child could arrange for other care. For example, they could investigate whether there would be room for the child with other family, friends, acquaintances, clan members, or an orphanage.⁸⁸

Human Rights Watch is further concerned to hear that in this particular case the Netherlands' child protection services had previously removed (by court order) the aunt and uncle's own children from their home after an assessment that the parents were not suitable caregivers.⁸⁹ Despite IND's decision that the three migrant children should be the responsibility of this couple, NIDOS has removed them from their home and placed them in a temporary children's center. Nevertheless, IND's decision that the children have no right to recognition as unaccompanied children in need of state protection still stands.⁹⁰

At least one court of first instance has ruled against handing over all responsibility for care and repatriation to any adult relative present in the Netherlands. The Zwolle district court held that the *ama* policy as it is currently implemented may result in unreasonable consequences requiring further consideration. In the case before the court, the IND held that an eight-year-old Congolese girl who had arrived unaccompanied in the Netherlands was in fact accompanied because she had an eighteen-year-old sister already in the Netherlands. IND was apparently not persuaded by arguments that the eighteen-year-old herself had been an unaccompanied child in the Netherlands for five years, where she had the right to remain indefinitely and had just begun university studies, and therefore could not be expected to return to the Democratic Republic of Congo to raise her eight-year-old sister. The lower court referred the child's case back to IND, ordering the IND to reconsider granting her a permit for unaccompanied children, questioning the policy obliging the child's sister to take over her care in their country of origin and IND's failure to take into account a previous civil court decision holding that the child should remain in the care of a state-appointed guardian since the sister was not a suitable caretaker.⁹¹

On appeal, the *Raad van State* reversed the Zwolle district court's decision on technical grounds, noting that the law required an administrative appeal to IND before the lower court could consider the case.⁹² Almost one year later, IND denied the child a permit for unaccompanied children, maintaining that the child's sister had the responsibility of returning her to and arranging for her care in the Democratic Republic of Congo. The child's lawyer is currently in the process of appealing IND's determination.⁹³

In cases where children arrive in the Netherlands together as a family unit and it is determined that the eldest sibling is eighteen or older, the subsequent determination that the younger children are accompanied by the eldest has immediate and dramatic consequences. The entire family's request for asylum will most likely be dealt with in an accelerated procedure, like most adult asylum claims in the Netherlands. If their claim is rejected, the children will be expected to leave the reception facility with their older sibling, who like Mahdi M.'s aunt would be suddenly responsible for returning the children to their country of origin. Dutch courts have held that in these cases, because the "accompanying adult" is illegal, the children have no rights to even basic material conditions

⁸⁸ IND decision (unofficial translation). See also letter to IND from the children's lawyer. Documents on file with Human Rights Watch.

⁸⁹ Human Rights Watch telephone interview with Esther Kruijen, Defence for Children International—Netherlands (DCI), February 17, 2003; Human Rights Watch telephone interview with Dorien van Veelen, lawyer, SRA—Den Bosch, February 18, 2003.

⁹⁰ Human Rights Watch telephone interview with Dorien van Veelen, lawyer, SRA—Den Bosch, February 18, 2003.

⁹¹ Zwolle district court, decision no. AWB 01/45263, December 21, 2001.

⁹² Raad van State, decision no. 200200340/1, February 15, 2002.

⁹³ Human Rights Watch interview with Yvon Zwetsloot, legal department, NIDOS, Utrecht, January 27, 2003.

such as housing or a food allowance in the Netherlands. In practice, this means that children as young as four years old can be put out onto the street without the basic means of subsistence or provisions for their care, unless NIDOS unofficially intervenes and provides them with some form of temporary accommodation.

For example, in the case of the Da Silva family, four siblings arrived in the Netherlands where they requested asylum. The children told authorities that they were eight, twelve, fourteen, and fifteen years old. During an accelerated asylum procedure the eldest child was sent for a bone scan examination, after which it was determined that she was “at least eighteen years of age.” After the four siblings were denied asylum, the authorities denied the three youngest children a temporary permit on the ground that the older sibling who accompanied them could provide for their care, despite the fact that the children would be forced onto the street or to live on charity. Luckily for these children, NIDOS has intervened, allowing them to unofficially remain in a reception facility for the time being.⁹⁴

Human Rights Watch questions the Dutch government’s assertion that siblings and extended family, within four degrees of relation, should be responsible for the repatriation, upbringing, and development of a child. While the Convention on the Rights of the Child does indeed place importance on a child’s maintaining links with his or her own cultural identity and family, in no way should this principle outweigh the obligation on signatory states to care for and protect children within their borders. Placing children—without documentation or legal status of any kind—into a home environment that has not been assessed for appropriateness or durability may result in a situation that is not in their best interests.

Summary determinations in the Netherlands as to whether a migrant child is accompanied fail to meet international and regional standards for the treatment of children. It is too easy for the Dutch government to simply wash its hands of the problem of unaccompanied children by claiming that the presence of adult siblings and family members within four degrees of relation on Dutch soil shifts the responsibility for care, protection, and repatriation away from the State. The Dutch government has committed itself to ensuring that every child, without discrimination, is protected from neglect, exploitation, and abuse, and it should respect these international obligations.

- *The Dutch government should amend current asylum and immigration law and policy so that the definition of unaccompanied minor is in conformity with accepted international and regional standards.*
- *The IND should revise the current asylum and immigration procedure for children so that each child benefits from a separate hearing on the best long-term solution in light of his or her special circumstances. In doing so, Human Rights Watch strongly suggests that the Dutch procedures follow the UNHCR recommendations set forth in paragraph 9.7 of the UNHCR Guidelines on Unaccompanied Children:*

It is acknowledged that many perspectives will need to be taken into account in identifying the most appropriate solution for a child who is not eligible for asylum. Such a multidisciplinary approach may, for example, be ensured by the establishment of Panels in charge of considering on a case-by-case basis which solution is in the best interests of the child, and making appropriate recommendations. The composition of such Panels could be broad-based, including for instance representatives of the competent governmental departments or agencies, representatives of child welfare agencies (in particular that or those under whose care the child has been placed), and representatives of

⁹⁴ Human Rights Watch telephone interview with Marjo Landsman, lawyer, January 29, 2003. See also lawyer’s brief to the appeals court on behalf of the four applicants, dated January 27, 2003; email communication from Riëtta van Empel Bouman, case manager, SRA—Rijsbergen, to Human Rights Watch, January 23, 2003.

organizations or associations grouping persons of the same national origin as the child.⁹⁵

- *The government of the Netherlands must take responsibility for the tracing of children's families in countries of origin and must make necessary arrangements for any repatriation, even for those children who are temporarily staying in the Netherlands with extended family. Paragraph 9.2 of the UNHCR Guidelines on unaccompanied children state that no repatriation should take place unless:*

Prior to the return, a suitable caregiver such as a parent, other relative, or adult caretaker, a government agency, a childcare agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection.⁹⁶

- *All children, including those who arrived as part of a "child family," who are allowed to remain in the Netherlands pending their repatriation should be provided with temporary documentation. Children who are permitted to stay with extended family or an adult sibling in the Netherlands, and who cannot be repatriated within the three-year stay requirement applied to unaccompanied children, should be given the option to apply for permanent residence in the Netherlands.*

⁹⁵ UNHCR Guidelines, para. 9.7.

⁹⁶ Ibid., para. 9.2.

RECEPTION CONDITIONS FOR ASYLUM SEEKERS

Under Dutch asylum law, asylum seekers awaiting an appeal after an initial rejection of their application in the accelerated “AC procedure” have no right to material reception benefits, including housing.⁹⁷ Asylum seekers engaged in a second asylum determination procedure (i.e. based on new evidence or changed circumstances) are also denied reception benefits, including basic shelter or social support provisions, unless they are too ill to travel to their country of origin or have an infant under the age of one year.

The Netherlands has an obligation under article 11 of the International Covenant on Economic, Social, and Cultural Rights to recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.”⁹⁸ The Committee on Economic, Social, and Cultural Rights (CESCR) has clearly asserted that no group may be denied the core content of this right:

The right to adequate housing applies to everyone. . . . regardless of age, economic status, group or other affiliation or status and other such factors.⁹⁹

The committee has explicitly recognized that asylum seekers as a group are entitled to basic housing assistance. The committee has expressed concern about the failure of some West European governments to stem discrimination against asylum seekers in the housing sector¹⁰⁰ and to provide adequate living conditions for asylum seekers in reception centers.¹⁰¹ Moreover, in 1998, the committee concluded that asylum seekers in various stages of the recognition process are entitled to adequate housing. The committee’s concluding observations on Germany expressed concern about the status of asylum seekers, “especially with regard to . . . their economic and health rights pending the final decision”¹⁰²:

The Committee requests the State Party to take immediate measures, legislative or otherwise, to address and redress the situation of the various categories of asylum seekers, in accordance with General Comment No. 4 [The Right to Adequate Housing] of the Committee.¹⁰³

The direct reference to the application of General Comment No. 4 to asylum seekers indicates the committee’s intention to add asylum seekers to the list of those disadvantaged groups expressly identified in the comment; those that “should be ensured some degree of priority consideration in the housing sphere.”¹⁰⁴

Other United Nations organs have also recognized asylum seekers as entitled to housing rights. The U.N. Special Rapporteur on Adequate Housing has identified asylum seekers as a group requiring special attention with respect to housing rights.¹⁰⁵ The special rapporteur noted that housing problems “plague” European Union

⁹⁷ The terms “material reception conditions” or “reception benefits” are used throughout this report to refer to social welfare benefits afforded asylum seekers after they arrive in the Netherlands (i.e., are “received”). These are common terms of art in refugee law and policy.

⁹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11.

⁹⁹ See United Nations, International Human Rights Instruments (HRI), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, p. 23, regarding General Comment No. 4 “The right to adequate housing (art. 11(1) of the Covenant),” sixth sess. (1991), para. 6.

¹⁰⁰ Committee on Economic, Social, and Cultural Rights, Concluding Observations on Belgium, U.N. Doc. E/C.12/1994/7, May 31, 1994, para. 14.

¹⁰¹ Committee on Economic, Social, and Cultural Rights, Concluding Observations on The Netherlands, U.N. Doc. E/C.12/1/Add.25, June 16, 1998, para. 18.

¹⁰² Committee on Economic, Social, and Cultural Rights, Concluding Observations on Germany, U.N. Doc. E/C.12/1/Add.29, December 4, 1998, para. 17.

¹⁰³ *Ibid.*, para. 28.

¹⁰⁴ Compilation of General Comments, General Comment No. 4, *op. cit.*, page 32, para. 8(e). Other groups identified as disadvantaged include the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, and people living in disaster-prone areas. *Ibid.*

¹⁰⁵ Second Progress Report submitted by Mr. Rajindar Sachar, Special Rapporteur on Adequate Housing, E/CN.4/Sub.2/1994/20, June 12, 1994, para. X(B)(2).

countries, manifesting themselves in, among other things, “the housing predicaments faced by refugees, asylum seekers, and other foreign nationals.”¹⁰⁶ The U.N. High Commissioner for Refugees (UNHCR) has concluded that asylum seekers should have access to the appropriate governmental entities “when they require assistance so that their basic support needs, including food, clothing, accommodation, and medical care are met.”¹⁰⁷

Moreover, in cases where significant numbers of individuals are deprived of basic shelter or housing, states parties may be seen as “prima facie failing to discharge [their] obligations under the Covenant.”¹⁰⁸ As a well-developed state party, the Netherlands’ obligation to fulfill its commitments under the Covenant is particularly strong.¹⁰⁹

In addition to the Netherlands’ obligations under the Covenant on Economic, Social, and Cultural Rights, it is required to uphold the E.U. Council Directive laying down minimum standards for the reception of asylum seekers in Member States, formally adopted by the Council of Ministers in January 2003.¹¹⁰ The Directive draws from existing international and European regional law and can be seen as a reflection of member states’ understanding of their minimum obligations to asylum seekers within their borders. Articles 2 and 3 of the Directive define an asylum seeker as an applicant for whom “a final decision has not yet been taken” and who is “allowed to remain on the territory as [an] asylum seeker.”¹¹¹

Material reception conditions of housing, food and clothing, whether in kind or in the form of financial allowances or vouchers, are to be provided asylum seekers under the Directive (article 13). Article 16 of the Directive further provides: “Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.”¹¹² Given the directive’s preliminary definitions as to what constitutes an asylum seeker—an applicant still in procedure pending a final decision—article 16 can be understood to require the provision of assistance for all persons awaiting an appeal or who have been accepted into a second asylum determination procedure.

According to the Directive, E.U. states in providing a minimum standard of reception toward asylum seekers, should take into account vulnerable persons (article 17). Vulnerable persons include accompanied and unaccompanied children, the elderly, and persons who have been subjected to torture, rape, or other forms of psychological, physical, or sexual violence. In cases where asylum seekers are victims of torture, rape, or serious violence, states have an obligation to ensure the provision of the necessary treatment for harm resulting from such acts (article 20).

Current policy and practice in the Netherlands, denying reception assistance to persons appealing the AC procedure and to those making a second application based on new facts or circumstances, violates the foregoing standards and greatly heightens the risk of refoulement. The case of the Jones family is illustrative. The Jones

¹⁰⁶ Ibid., para. 36.

¹⁰⁷ United Nations High Commissioner for Refugees, Executive Committee Conclusions, Conclusion on Reception of Asylum Seekers in the Context of Individual Asylum Systems, No. 93(LIII), October 8, 2002, para. (b)(ii).

¹⁰⁸ Ibid., p. 20, citing General Comment No. 3, “The nature of States parties’ obligations (art. 2, para. 1, of the Covenant),” Fifth sess. (1990), para. 10. The committee also notes that, “[i]f the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.” Ibid.

¹⁰⁹ See discussion in John A. Dent, *Research Paper on the Social and Economic Rights of Non-nationals in Europe*, commissioned by European Council on Refugees and Exiles (ECRE). During its review of Austria, members of the Committee found an Austrian policy of denying aliens maternity benefits available to nationals to be impermissible discrimination under article 2. The exception under article 2(3) did not apply, because Austria was by no means a “developing country.” See U.N. ESCOR, 2d. Sess., 4th mtg. at 8, P 45, U.N. Doc. E/C.12/1988/SR.4 (1988); U.N. ESCOR, 2d Sess., 3rd mtg. at 4-5, P 13, U.N. Doc. E/C.12/1988/SR.3 (1988).

¹¹⁰ See Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Official Journal of the European Union, L 31/18, February 6, 2003 [Council Directive on Minimum Standards of Reception].

¹¹¹ Ibid., art. 2(c) and 3(1).

¹¹² Ibid., art. 16.

family—mother, father, and two brothers (ages one and six)—arrived in the Netherlands from Rwanda in December 2002. They told authorities that they were victims of torture and had witnessed the killings of their families in massacres in 1994. In the fall of 2002, the perpetrators of these killings were released pending a decision on their cases as part of a program to free up prison space. They threatened the Jones family with death and were said to have carried out murders of other witnesses living in the same village. The family then fled Rwanda, making their way to the Netherlands where their application for asylum was processed in the AC procedure. Upon arrival and throughout the AC procedure, the mother showed serious signs of trauma and psychological breakdown. The family was released from the asylum-seekers' center once their application for asylum was rejected—a patently erroneous decision that was later reversed by the lower court on appeal. Their request for minimum reception conditions—basic shelter and food—had been flatly denied on the basis that applicants appealing a negative decision in the accelerated procedure do not have the right to any social assistance. Three days later, when their appeal was heard and the IND's decision reversed, the family could not be found.¹¹³

In such cases, the inadequacies of the AC procedure and judicial review detailed above are compounded by economic hardship suffered by asylum seekers pending appeal. Without lawful avenues to employment or state assistance with food and shelter, asylum seekers are hard pressed to pursue an appeal and, as in the case of the Jones family from Rwanda, may simply give up on the process. If such asylum seekers are later found illegally resident in the Netherlands, they face a serious risk of forced return.

- *The government of the Netherlands should immediately make provisions for all asylum seekers who have not received a final negative decision on their applications to receive basic reception assistance, including housing, food, and access to health care. This should include asylum seekers awaiting an appeal after a negative decision in the accelerated procedure as well as asylum seekers who have been accepted for consideration in a full asylum procedure on the basis of a new (second) asylum application.*
- *Human Rights Watch recommends that the government devise a system for ensuring that persons who show signs of serious trauma receive necessary treatment and support while in the Netherlands, even if these persons are rejected in an accelerated asylum procedure and ultimately may not meet the criteria for refugee status.*

Currently, asylum seekers rejected from the full asylum procedure lose their right to assistance twenty-eight days after they receive a negative decision on their application from the court of last instance. Jurisprudence from the Raad van State has established that an automatic termination of assistance is a natural consequence of the court's rejection of one's asylum application.¹¹⁴ Dutch law only provides for two exceptions to this automatic termination policy: 1) for persons who are so ill it would be inadvisable for them to travel; and 2) for persons coming from countries to which there is a current moratorium on deportations. In the first case, the applicant's physical illness must be so severe that the trip itself would be harmful to his or her health. Furthermore, applicants requesting a waiver of the termination of reception rights on this basis may only make such a request after the rejection of the asylum request has become final, meaning after the twenty-eight-day period has lapsed and expulsion is an imminent possibility. The effect of this policy is that persons so ill they cannot travel may end up being evicted from the reception center before they have a meaningful opportunity to petition the authorities for a waiver of their eviction.¹¹⁵

¹¹³ Human Rights Watch interview with Hilda van Asperen, lawyer, Advokatenkollektief Rotterdam, Rotterdam, January 14, 2003.

¹¹⁴ Raad van State, decision no. JV 2002/169, July 24, 2002.

¹¹⁵ Human Rights Watch telephone interview with Wilma Lozowski, policy officer, Dutch Refugee Council (headquarters), February 6, 2003; Human Rights Watch interview with Stefan Kok, policy officer, Dutch Refugee Council (headquarters), February 11, 2003.

There are no other mechanisms in the law whereby a rejected asylum seeker can request protection or basic support from the government on the basis of humanitarian circumstances during his or her subsequent presence in the Netherlands. Consequently, families with children, including infants as young as four months old,¹¹⁶ severely traumatized persons, the elderly, people who are very ill (but not determined to be so ill that they cannot fly), and persons with physical handicaps such as blindness are automatically denied the right to all housing or basic assistance beyond the twenty-eight-day period. In many of these individual cases, the Dutch government has no direct role in arranging the repatriation or deportation of rejected asylum seekers, instead referring them to the International Organization for Migration.¹¹⁷

Human Rights Watch believes that the Netherlands' rigid policy for terminating rights to basic assistance is in violation of its obligation under article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to recognize the right of all persons to an adequate standard of living.

- *The Dutch government should separate the asylum determination outcome from the decision to revoke basic shelter, so that rejected asylum seekers in need of humanitarian assistance have an opportunity to request such assistance at any point pending their repatriation or deportation to their country of origin.*
- *In addition, the range of humanitarian circumstances warranting an exception to the automatic termination of housing rights twenty-eight days after a final decision is made should be expanded to include consideration for vulnerable persons such as families with children, the elderly, and persons who are physically or mentally ill or traumatized.*

CONCLUSION

Human Rights Watch is concerned that certain key aspects of Dutch asylum policy and practice violate international and regional human rights norms. In particular, Human Rights Watch's analysis raises questions about Dutch immigration and asylum authorities' use of the AC procedure. At present the procedure is being used for applicants from war-torn and repressive countries, for those with claims involving complex legal and factual issues, and for those who demonstrate signs of trauma, illness, or difficulties presenting their claims. The process is swift and affords applicants little opportunity to benefit from the assistance of lawyers assigned to them. Such cases raise a serious risk of error, against which the limited judicial review on appeal offers an inadequate check. The result is an unnecessarily high risk that the procedure will result in violations of the Netherlands' non-refoulement obligations. It is critical that the government take steps to re-evaluate the AC procedure in light of the numerous rights concerns raised in this report.

¹¹⁶ Email communication from Anne Louwerse, lawyer, Hamerslag & van Haren Advocaten, to Human Rights Watch, January 24, 2003, describing a recent case of hers in which the police forcibly evicted a woman and her four-month old baby from the reception center. The woman's lawyer had filed an appeal, arguing that the legislature had intended that there be an individual assessment of reasonableness prior to evicting asylum seekers (see *nadere Memorie van Antwoord*, EK 2000-2001, 26732, 26975, no. 5d, p. 26-27 and EK 2000-2001, 26732, 26975, no. 5b, p. 43). As discussed in this report, the Dutch government has an absolute obligation to protect children within their jurisdiction, regardless of their legal status or that of their parents. IND officials have argued that the government does not want to split up families by providing children with housing facilities when their parents are not eligible. Human Rights Watch interview with IND officials, Immigration Policy Department, Ministry of Justice, The Hague, January 24, 2003. This argument is untenable. As a party to the Convention on the Rights of the Child, the Netherlands is in fact obliged to help parents to provide children

a standard of living adequate for the child's physical, mental, spiritual, moral and social development. ... State Parties ... shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Convention on the Rights of the Child, art. 27.

¹¹⁷ Human Rights Watch interview with senior policy officers, Unit Admission and Residence, Immigration Policy Department, Ministry of Justice, The Hague, January 24, 2003.

Human Rights Watch is also concerned that IND is inappropriately interviewing very young children, and in some cases, misusing that information in the evaluation of their asylum claims. Our findings suggest that the Dutch government's very broad definition of "accompanied children" may in many cases put such children in circumstances that do not serve their best interests. The government of the Netherlands should take immediate steps to ensure its compliance with international commitments for the treatment of children and communicate the importance of these obligations to all asylum and immigration decision-makers.

Finally, current policies regarding the provision of assistance to asylum seekers do not meet basic international standards. At a minimum, the Netherlands must ensure that all asylum seekers whose claims are still under consideration (including on appeal) have access to basic assistance, such as housing and food. The government must also ensure that rejected asylum seekers in particularly vulnerable situations have the ability to appeal to Dutch authorities for continued material assistance.

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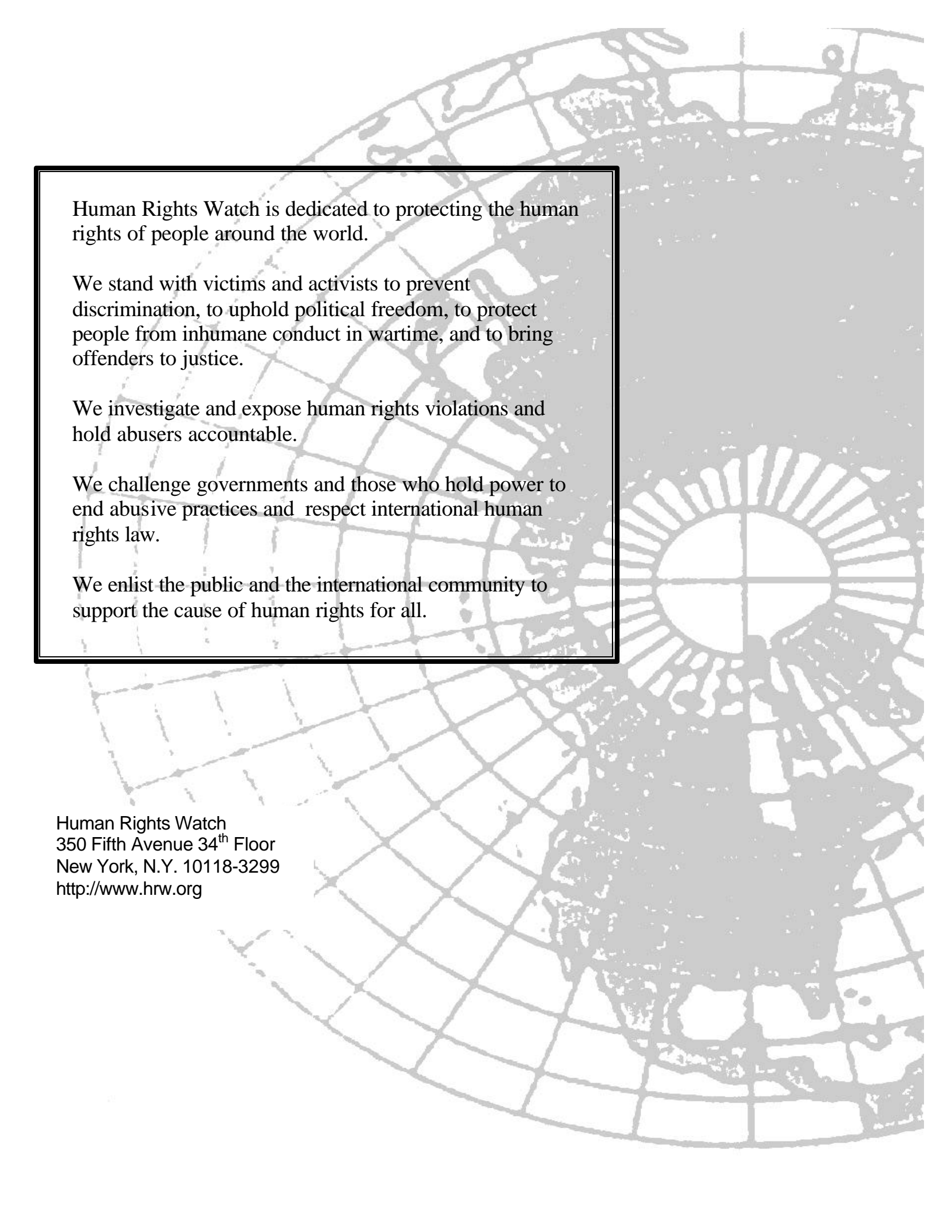
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