FAMILY REUNIFICATION

Policy and implementation
2008 - 2013

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Date: 6 June 2013
Recommendation: KOM/003/2013

GLOSSARY

Awb	Algemene wet bestuursrecht (Awb) (General Administrative Law Act)
COA	Centraal Orgaan opvang Asielzoekers (Central Agency for the Reception of Asylum Seekers)
Case decision official	Official or employee who will take a decision when requested
ECHR	European Convention on Human Rights
Hearing	Investigation during which oral statements about the family connection will be made
Hearing official	An official employee who conducts a hearing
Head person	See main sponsor
IND	Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service)
UNCRC	United Nations Convention on the Rights of the Child
MVV	Machtiging Voorlopig Verblijf (Temporary Residence Permit)
Sponsor	Person in the Netherlands with whom the child wishes to reunite
UNHCR	United Nations High Commissioner for Refugees
EMM	Expertisecentrum Mensenhandel- en smokkel (Centre of excellence for human trafficking and smuggling)

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Research overview

In response to high and rising rejection rates of applications for family reunification by children in the period May 2012 - February 2013, the Ombudsman for Children investigated how much the Dutch policy on children travelling in connection with family reunification is aligned and implemented in accordance with the Convention on the Rights of the Child. The Ombudsman for Children has investigated the policy for travelling in connection with family reunification from 2008 to the current date and the way it has been implemented in practise by the Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service (hereinafter: IND)) and the Dutch diplomatic posts abroad.

For the purposes of this investigation, the Ombudsman for Children took a sample of 459 IND case files, within which are 1672 children who have applied to reunite with a parent seeking asylum in the Netherlands since 2008. A qualitative investigation was carried out on 30 case files, which were looked at in terms of how they were acted upon from the moment the application was submitted, including the investigation carried out by the IND and the diplomatic post into the connection between the parent and the child, the IND decision, to an eventual rejection or appeal. The Ombudsman for Children's investigation team also visited the embassies in Nairobi and Addis Ababa, where hearings with children were observed. The format used in these hearings was analysed. Interviews were held with six reunited children who are now living in the Netherlands and 17 children awaiting family reunification and who remain in Addis Ababa or Nairobi. Interviews were also held with four hearing officials who held children's hearings at the embassies, with other officials from the Dutch embassies who were involved in the process, and with employees working as case decision officials working in the Netherlands and IND case decision officials. Lawyers and VluchtelingenWerk (the Dutch Council for Refugees) were also spoken to.

Main conclusions

On the basis of this investigation, the Ombudsman for Children has found that since 2008, the rights of children to be reunited with a (foster) parent who is a refugee in the Netherlands have been seriously violated by the Dutch government. An increasingly stringent policy, in which many unjustifiable demands are placed on families in order to be eligible for reunification, coupled with careless working methods of the IND, has meant that the rights of children to be reunited with their parents have been infringed.

The Convention on the Rights of the Child states that a child has the right to grow up with his/her parents, unless this is not in the best interests of the child. Under the Convention, the Dutch government has an obligation to act on applications for family reunification in a positive, humane and expeditious manner. The Ombudsman for Children has found that none of these obligations were met. The shortcomings at different stages of the family reunification procedure are so deficient that since 2008, children who submitted a request have not received a full opportunity to make use of this right to family reunification. The risk is therefore considerable

that there are large numbers of children who remain separated from their parent incorrectly. The Ombudsman for Children deems this to be unacceptable.

Both the legislation and policy for children travelling in connection with family reunification that is (has been) applicable, and its implementation thereof, has thus led to an unacceptable restriction of the right of the child to a family life with his/her (foster) parents. The main concerns of the Ombudsman for Children are:

1. *Legislation and policy: unjustifiable restriction on the right to a family life*

The handling of the legal and policy criteria concerning family reunification means an unauthorised and unjustifiable interference with the right of the child to a family life. The following conditions must be fulfilled: 1) parent and child must prove that they have had an actual family connection before the parent departed and the link may not have been interrupted in the meantime,

2) this family must have been formed in the country of origin,
3) the application must be submitted within three months of the asylum permit being granted to the parent
4) the (foster) parents and the child should have the same nationality. The Ombudsman for Children wonders what purpose each of these requirements serves. They are certainly not justifiable in terms of representing the best interests of the child.

2. *Focussing on fraud and abuse results in the child's rights being lost*

Based on signs of suspected fraud and abuse in the procedure for travelling in connection with family reunification, the family reunification policy has become increasingly stringent since 2008. The Ombudsman for Children concludes that the restrictions that were applied to the policy were only introduced due to suspicions of fraud and therefore, are insufficiently substantiated.

The focus of the ministry responsible[1] and the IND became increasingly focussed on combating fraud and abuse. The burden of proof to show that the parent and child actually form a family is no longer done through DNA testing, more through parent and child coming together. This means that the bar has been raised further. The tightening in policy has been increasingly applied to all children who submit an application (biological as well as foster children and children of all nationalities), although the signs pointed to the system being subject to fraud and abuse when it comes to Somali children in particular. The Ombudsman for Children has seen that, as a result of the focus on the fight against fraud and improper use of the procedure for travelling in connection with family reunification, the interests of the child, both in policy and implementation, have been completely lost. The result is that the procedure has become so careless that it cannot be maintained, and the high rejection rates now confirm the previously existing suspicions of fraud. A policy that places consideration on the control of fraud and abuse should not lead to such a large curtailment of fundamental rights such as the right of the child to grow up with their parents. Because the procedure, according to the IND, has become "broader and more intensive" with a view to combating fraud, it is possible that in recent years,

[1] In the period studied, the Ministry of the Interior and Kingdom Relations and then the Ministry of Security and Justice were the responsible ministries.

applications from children have been wrongfully dismissed because their application was handled carelessly.

The Ombudsman for Children is of the opinion that the Dutch government has overshot the mark with its measures to fight fraud. Since 2008, there has been a large increase in the rejection rate. In 2008, 12% of the applications were rejected; in 2011, that rejection rate rose to 83%. In particular, it has become almost impossible for Somali children to reunite with a parent in the Netherlands; in 2011, less than 10% were admitted for family reunification. The Ombudsman for Children deems it unlikely that the high rejection rate is entirely due to cases of fraud and abuse, which have been discovered through more intensive screening.

The shortcomings in the IND's working method are so serious that this, according to the Ombudsman for Children, is the most important factor in explaining the high rejection rates.

3. *Hearings and decisions: the expectations placed on the child are too high, without substantiation*

The Ombudsman for Children is shocked about the way in which the IND has implemented the policy for travelling in connection with family reunification in recent years. The Ombudsman for Children has noticed that the way in which children are heard in Dutch embassies in order to establish a family connection does not meet the requirements described in the Convention on the Rights of the Child about how children will be heard.

During the hearing, even young children (under 12 years) are subjected to high tempo questioning of a large amount of questions (on average between 150 and 200). The officials who run the hearings with children are not, or are insufficiently, trained. The process around the hearings is not monitored, children have no legal aid, problems are experienced with the interpreters and children cannot see the hearing report. The pressure on the children to make statements at such a high tempo is too great. Questions that are asked are not appropriate for the child's age, and not enough consideration is given to the fact that these children may have had to endure traumatic events in their short lives. Children are insufficiently informed about the purpose of the hearing and the possible consequences thereof. Moreover, reporting is not carried out carefully enough and it can take years before the child gets to hear a final decision.

The hearings at the diplomatic posts do not have enough safeguards for the child. However, the follow-up effects can be great: the hearing reports are one of the most important information sources IND case decision officials have when they are considering whether the requirements for travel in connection with family reunification have been met. The case file investigation shows that the vast majority of children are rejected because, according to the IND, they and their parent were unable to make a convincing case during the hearings that they were a family up to the departure of the fleeing parent. According to the IND, there are too many contradictions in the statements made by the family members. In practice, it seems that there may indeed be some contradictions relating to fine details, which provide a reason for the IND to reject the request.

The IND expect the children to be able to provide, for example, an extensive and detailed picture of their family life before the departure of the parent, as well as a detailed picture of their parents and brothers and/or sisters. This leads to unsubstantiated perceptions about what may be expected from a child when making a statement, leading to the IND lacking the expertise to

make an evaluation. The Ombudsman for Children is of the opinion that, during the decision making process, the importance placed on the finer details contained in the statements is not in proportion with the degree of care with which the family connection will be investigated.

The Ombudsman for Children has found that the IND concludes too quickly that there is no family connection. The focus is placed on finding contradictions in the statements, and any consistencies seem to be placed to one aside all too easily. The Ombudsman for Children wonders whether, now and in the past, the IND has concluded too quickly that no actual family connection existed due to contradictions in the statements. The Ombudsman for Children has noticed that the IND is not transparent about how contradictions and consistencies are compared when making its decisions. Moreover, neither the Ombudsman for Children nor the child are able to see how the decisions taken by the IND take the best interests of the child into account.

Main recommendation: restitution for children who, since 2008, have been rejected

In recent years, the Dutch Government has carelessly treated children who wanted to return to a parent seeking asylum in the Netherlands. During their evaluation of an application, the IND officials are too focused on the prevention of fraud and therefore, the best interests of the child are lost. The ever stricter policy has led to an unacceptably high risk that the 3,910 children, who applied for family reunification and were consequently rejected, may possibly remain unjustly separated from their parent. Their right to reunite with their parents has therefore been violated.

According to the Ombudsman for Children, that can mean only one thing: those children who submitted an application for family reunification since 2008 and were subsequently rejected by the IND should be given a fair chance. They (or their parents on their behalf) must be given the opportunity to submit a new application, which will then be tested against an improved legal and policy framework and properly evaluated.

The Ombudsman for Children strongly recommends that the failing policy of recent years be rolled back and the children who may have remained unjustly separated from their parents be allowed to reunite with them.

Recommendations from interviewed children

All children give the same recommendation:

"reduce the waiting time for the decision."

And you always should be able to get an answer about how long you will have to wait for the answer.

About what a hearing is

Explain in advance what a hearing is and how it proceeds.

Clearly explain the purpose of the hearing at the start.

About conduct

Choose a suitable place to conduct hearings for children that is quiet and away from busy corridors.

Put someone in there who will look after you, who can help you relax and to whom you can ask anything.

Explain how long the hearing will last.

Give thought to providing a break, otherwise children will say no.

About the hearing official

Make sure the official is pleasant and gives you enough time to think about the answers to the questions.

Ask fewer questions and ask child-friendly questions in a child-friendly way, so that it seems that it is conceived for the child.

Don't push someone if they don't know the answer.

Don't be scared of saying something wrong.

Don't be pushy, ask questions about nasty events calmly and if possible, not at all.

If a child begins to cry, take the time for a break outside the room so that the child can get some fresh air.

About the language

Bring in an interpreter without an accent.

Make sure you can make a statement twice if you meant something else.

Go over the report and amend it as required.

1 INTRODUCTION

The Ombudsman for Children has recently investigated the way in which the Dutch Government dealt with applications from children to reunite with a parent seeking asylum in the Netherlands since 2008.

Reason for this initiative

The Ombudsman for Children carried out this investigation because of the figures from the Immigration and Naturalisation Service (IND) about the applications from children to reunite with a parent seeking asylum in the Netherlands. In 2012, these figures were recorded in the Rights of the Child check, wherein the Ombudsman for Children provide an annual insight into the state of affairs concerning children's rights in the Netherlands.[2] These figures provide cause for concern to the Ombudsman for Children. Since 2008, the rejection rate for these applications has risen sharply: in 2008, 12% of applications for family reunification (presented by children up to 18 years) were rejected, in 2011 that increased to 83% of all applications.[3]

Table 1: Number of processed applications submitted by children for travel in connection with family reunification (2008-2011) and the number and percentage of rejections[4]

	Number of applications	Number of rejections	Rejection rate (%)
2008	250	30	12%
2009	230	120	51%
2010	1490	1250	84%
2011	3030	2510	83%
Total	**5000**	**3910**	**78%**

Source: Immigration and Naturalisation Service (2012)

The vast majority of applications are submitted by Somali children (who complete their application in Ethiopia, Kenya and Yemen[5]), but children from Iraq and Afghanistan also form a significant number of the total applications. It is striking that the rejection rate is especially high for Somali children and that the percentage has greatly increased since 2008, up to almost 90% in 2011 (see table 2).

[2] Rights of the Child check 2012, the Ombudsman for Children, in collaboration with the Department of Juvenile Justice in Leiden University and the Social and Cultural Planning Office

3 Due to the fact that the IND has introduced a new registration system during this investigation, there are no figures available for applications filed in 2012. After being requested, The IND has only provided the Ombudsman for Children with an estimate of the percentage of acceptances. As an estimate, this is between 35% and 40%. This includes all applications to travel in connection with family reunification, including those of spouses. It is not possible for the IND to assess the percentage of applications by minors that were accepted.

4 Rounded up to the nearest ten. Figures cover both minors and children who have come of age. The IND does register these separately.

[5] The consular department of the embassy in Yemen has been closed for some time, meaning Somali children cannot submit an application there at the moment.

Table 2: Rejection rates of family reunification applications by asylum seekers (travel in connection with family reunification) by diplomatic post in the top ten countries with the most requests[6]

Diplomatic post	2008		2009		2010		2011 (first half)	
	Total	% rejection	Total	% rejection	Total	% rejection	Total	% rejection
Ethiopia	330	*18%*	*150*	*68%*	*1200*	*88%*	*1,020*	*88%*
Kenya	*<10*	*0%*	*40*	*79%*	*340*	*85%*	*320*	*88%*
Yemen	*<10*	*67%*	*20*	*80%*	*100*	*79%*	*230*	*87%*
Syria	*<10*	*13%*	*40*	*14%*	*30*	*19%*	*110*	*17%*
Uganda	*<10*	*0%*	*<10*	*100%*	*40*	*92%*	*60*	*86%*
Sudan	*<10*	*22%*	*20*	*20%*	*30*	*25%*	*20*	*55%*
Senegal	*<10*	*0%*	*20*	*44%*	*30*	*84%*	*20*	*60%*
India	*20*	*31%*	*<10*	*75%*	*<10*	*25%*	*30*	*17%*
Iran	*<10*	*0%*	*<10*	*0%*	*20*	*47%*	*20*	*16%*
Ghana	*<10*	*0%*	*10*	*25%*	*<10*	*17%*	*10*	*90%*
Overall	*30*	*35*	*60*	*44*	*90*	*53*	*150*	*56*
Grand total	***420***		***360***		***1,870***		***1,980***	

Source: Immigration and Naturalisation Service (2012)

Signs were also emerging from the legal profession, VluchtelingenWerk Netherlands (the Dutch Council for Refugees) and Defence for Children, that the Dutch policy with regard to children travelling in connection with family reunification did not take the best interests of children into account, which gave the Ombudsman for Children a reason to carry out further investigation into the way the Dutch Government deals with these applications.

Purpose and scope of the investigation

In this investigation by the Ombudsman for Children, the central question is whether, since 2008, the Dutch Government has complied with the Convention on the Rights of the Child concerning the treatment of applications from children to follow their parent and travel to the Netherlands. The Ombudsman for Children has to answer this question in terms of the legislation and policy frameworks, as well as whether they were implemented correctly by the IND and diplomatic posts abroad. The Ombudsman for Children thereby examined how the application process works within which the applications of children are treated and how the IND evaluates whether a child is eligible for family reunification.

The Ombudsman for Children has examined the procedure for travelling in connection with family reunification with the UNCRC[7] and the pertinent General Comments of the UN Children's Rights Committee[8] as the most important review framework. Following the findings, the Ombudsman for Children makes a number of recommendations in this report, including providing direction to the responsible Secretary of State for Security and Justice and to the Director of the Immigration and Naturalisation Service. These recommendations deal with both the resulting legislation and policy for travelling in connection with family reunification, as well as

[6] This means applications for a Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) at Dutch embassies and consulates. These figures from the IND do not distinguish between applications from children to stay with their parent and spouses who want to reunite with their partner.

[7] International Convention on the Rights of the Child, New York, 20 November 2011; Tractatenblad (Trb.) (Treaty Series). 1990,170; approval of the ratification in law of 24 November 1994, Staatsblad (Stb.) (Bulletin of Acts and Decrees) 1994, 862.

[8] UN Children's Rights Committee, General Comment 6 and 12 of the UNCRC

the implementation in practice. In recent years, there have been several policy changes in connection with the procedure for travelling in connection with family reunification; and again recently, a number of further points were also changed, which has led to some of this investigation relating to obsolete policy. Where relevant, this distinction has been made clear in this report.

Where necessary in this investigation, the Ombudsman for Children has distinguished between Somali children and children of other nationalities. Because the vast majority of applications for travel in connection with family reunification since 2008 were submitted by Somali children, more attention has been paid recently in Dutch policy towards them, and the rejection rate of this group is significantly higher than other nationalities, the Ombudsman for Children believes that it is sometimes necessary to highlight the position of Somali children. Moreover, the merging of figures may result in a distorted image, so the differences between Somali children and children of other nationalities are not visible.

Obligations of the Netherlands

In 1995, the Netherlands signed the Convention on the Rights of the Child (UNCRC). This means that the Dutch government must fulfil obligations in all areas where children come into contact with the government and government procedures. The children who submit an application to reunite with a parent in the Netherlands, even if they are not travelling in Dutch territory but do come into direct contact with the Dutch government, are also entitled to these obligations being met and are exposed to Dutch procedures. They must submit their application to one of the Dutch diplomatic posts and their application is evaluated by the Immigration and Naturalisation Service. Therefore, the Dutch government has a responsibility towards these children resulting from the UNCRC.

Under the UNCRC, the Dutch government has an obligation to act on applications for family reunification in a positive, humane and expeditious manner.

The UNCRC stipulates that children should not be separated from their parents against their will, unless it is in the best interests of the child[9]. Which may be the case in the event of abuse or neglect. When such a decision must be made, all parties, including the child, must be given the opportunity to participate and be heard during the procedure. The UNCRC also contains a specific article about family reunification[10]. Article 10 stipulates that the State must act on applications for a child to enter (or exit) a state for the purpose of family reunification in a positive, humane and expeditious manner. If the parents of the child reside in different states, the child is entitled to visit both parents on a regular basis to maintain direct contact with them. The right of the child to a family life is also established in international law in other places, such as in Article 8 of the European Convention on Human Rights.

Short outline of the current family reunification procedure

If a parent has been granted asylum status in the Netherlands, other family members who remained in the country of origin also qualify for derivative asylum status. This counts for both spouse and the children. Besides biological minors, foster children who are a part of the family also come under family reunification. Even children who have come of age who are part of the

[9] UNCRC, Article 9.
[10] The right of the child to live with their parents is stipulated in both the UN Convention on the Rights of the Child, as well as in other conventions. This is discussed further In the legal framework (appendix 2).

family and dependent on the person who is in the Netherlands may appeal under the procedure for travelling in connection with family reunification.

A number of criteria that must be met to qualify for travel in connection with family reunification in the Netherlands are stipulated in the Vreemdelingenwet (the Aliens Act). One of the requirements is that the child with the parent who resides in the Netherlands must have had an "actual family connection" at the time of the departure of the parent from the country of origin. The parent who has been granted asylum in the Netherlands must also begin the procedure for travelling in connection with family reunification within three months of being granted the status by making the travel in connection with family reunification known to the IND. This can be done by submitting an application for a recommendation concerning a Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit). An evaluation will be made about whether the family could potentially qualify for family reunification and a positive or negative recommendation will be issued. In both cases, if there is compliance with the three-month period, the child submits an MVV application to the Dutch embassy[11]. Formally, this is still not an application for derivative asylum status to permanently reunify with the parent in the Netherlands, but simply a request for a temporary visa to travel to the Netherlands in order to apply for derivative asylum status under travel in connection with family reunification.[12] Once the application is filed, the IND will begin an investigation to determine whether there is compliance with the criteria for family reunification. It is then the responsibility of the person submitting the application to prove an actual family connection. During the period 2008-2013, the IND used different investigation methods to assess those family connections. Before 2007, the statements of the parent in the Netherlands, in combination with the guiding documents that had been submitted, were used as the main body of proof and a DNA test was rarely carried out. In 2007, it was decided that a DNA test would be carried out more frequently to establish family connections. In 2009, the policy was tightened and a DNA test was no longer offered at the time that a child submitted an application for family reunification. To prove the family connection, the parent and child must make statements in hearings about the family connection. The parent in the Netherlands, the children at the diplomatic post. Based on statements made during these hearings, the IND in the Netherlands evaluated such things as whether there was an actual family connection between the parent and the child at the time of departure of the parent from the country of origin. Recently, DNA tests have started again for biological children from the core family[13] (under conditions). Previously a large part of the statements made by the children at the hearings about what had happened to them in the years leading up to the application was used as the main body of evidence, for example, children from mixed families (where foster children or step children form a part of the family) or broken families (for example, if one parent is deceased or has left).

Structure of the report

The investigation by the Ombudsman for Children looked at both the legislation and the policy for travelling in connection with family reunification that was applicable to these children since 2008, as well as their implementation by the IND and the Dutch diplomatic posts abroad.

[11] This can be in the country of origin or in the country of permanent residence.
[12] Because the Netherlands has no representation in Somalia, Somali children must submit their application to the embassies in Nairobi (Kenya) or Addis Ababa (Ethiopia). In the past, Somali children could also submit their application at the embassy in Yemen, but since closing the consular department there, this has not been possible for some time. The possibility to only be able to apply for an MVV in neighbouring Kenya and Ethiopia, is one of the policies of tightening that were implemented in 2009. That means, for example, that for Somali children who fled to Sudan, there is no longer a possibility to submit an application and they are required to travel independently to Kenya or Ethiopia.
[13] Consisting of both parents and their joint biological children.

In part one of this investigation, the Ombudsman for Children outlines Dutch legislation and the policy for travelling in connection with family reunification that has been in force since 2008, using parliamentary documents, house letters, policy evaluations and interviews with policy makers of the IND as a basis.

In part two of this investigation, the Ombudsman for Children focused on the question of how the policy for travelling in connection with family reunification was carried out in practice. In particular, the way in which the investigation concerning the family connection between the parent in the Netherlands and the child was carried out by the IND and the embassies of the diplomatic posts. The Ombudsman for Children has therefore used its orthopedagogical expertise while carrying out this investigation to evaluate the extent to which this practice is child-friendly and how well it conforms to the UNCRC.

A methodological description of the investigation is included in the appendix, as well as the legal framework. In this appendix, the relevant international laws and regulations that are applicable to children who have applied for travel in connection with family reunification, and the obligations of the Dutch government, are mapped out.

Experience of children

The Ombudsman for Children believes the experiences and recommendations of children themselves hold great value. In almost every paragraph, the experiences are summarised and examples are provided. The recommendations from children consist of answers they gave when asked about major improvements for the future that should be written in this report.

Acknowledgements

During this investigation, the Ombudsman for Children was very thankful to be supported by the following organisations and stakeholders: the Ministry of Security and Justice and the Ministry for Foreign Affairs, the Dutch embassies in Kenya and Ethiopia, the IND, lawyers, the Vluchtelingenfonds (the Refugee Fund), external researchers (T. Fresen, A. Serraris) and experts (Drs. van der Sleen, Kinterview and Prof. van Walsum and Mr. Arbaoui, VU, Dr. De Lange, UvA). Many thanks are owed from the Ombudsman for Children to the children and their families for their willingness to participate and their sincerity.

2 LEGISLATION AND POLICY

2.1 The right to family reunification in Dutch legislation

The Netherlands offers people who have had to flee their countries of origin and attain asylum status here[14] with the opportunity to reunite with family members from whom they were separated as a result of leaving. The IND has determined that they had grounds to be fearful if they stayed in their country or feared a breach of Article 3 of the European Convention on Human Rights and therefore are not able to return to their families who are left in the country of origin. Therefore, these asylum status holders have the option to request that their family members travel to the Netherlands for the purpose of reunification. This could mean a husband/wife, minors who form an actual part of the family of the person in the Netherlands (the sponsor), or child of a partner who has come of age who is so dependent on the alien that, for that reason, he is a part of the family of the sponsor.[15] Foster children, who are not biologically part of the family, but have an actual connection with the (foster) parents, are also eligible for travel in connection with family reunification. The travel in connection with family reunification of family members of refugees is a special form of family reunification. Unlike regular family reunification, there is no income requirement and no fees are required to be paid.

To qualify for travel in connection with family reunification, several criteria must be met. The Vreemdelingenwet 2000[16] and Vreemdelingencirculaire (Aliens Act Implementation Guidelines) it is stated that family members of asylum status holders would be allowed if:

1. the application is submitted within three months of an asylum permit being issued to the sponsor;
2. there is proof of an actual family connection;
3. this family connection must have arisen in the country of origin;
4. the family members have the same nationality.

2.2 An elaboration of the actual connection criterion

The "actual connection" criterion applicable to family reunification for asylum status holders (who are distinguished from regular family reunification) implies that the family member that is eligible for travel in connection with family reunification must actually have been part of the family of the parent in the Netherlands before departure from the country of origin. The actual connection criterion applies to both biological children and foster children. This means that in the case of biological children, a biological connection with the parent in the Netherlands is not sufficient to qualify for family reunification. They also have to prove that they actually formed a part of the family of the parent in the Netherlands until the departure of said parent.

The IND has a large scope of interpretation when evaluating the actual family connection. A clear definition and how to use it is not stipulated in policy. In each case, the IND will evaluate whether there is sufficient evidence that the parent and child had an actual family connection before the departure of the parent. This means that, in any case, in the case of children, that the parent in the Netherlands (jointly) must have been responsible for the care of the child in the country of origin.[17] It also requires that the child lived with the parent and that this cohabitation was uninterrupted for a long period of time. What is meant exactly under "a long period of time"

[14] The asylum status is granted under the Vreemdelingenwet (the Aliens Act) of 2000, article 29, paragraph 1a-d.
[15] The legislation regarding the procedure for travelling in connection with family reunification is stipulated in the Vreemdelingenwet 2000, article 29, paragraph 1 e-f (in the legislative proposal for reunification on grounds of asylum article 29 paragraph 2).
[16] Vreemdelingenwet 2000, article 29, paragraph 1 e-f (Article 29, paragraph 2 of the legislative proposal for reunification on grounds of asylum).
[17] Letter from Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 24 January 2012

is not fixed in policy. In practice, the actual connection criterion is interpreted more strictly when applied to family reunification of refugees than it is when applied to regular migrants. The family connection of refugees will be considered broken if a child has been taken in by another family. For the IND, this forms independent grounds for rejection.[18]

The crucial question is, when can one speak of a "family" and how this can be tested by the Dutch government if a child calls upon the procedure for travelling in connection with family reunification? Because some definitions do not have a concrete definition in the policy, and for each individual case the IND must evaluate what is meant by "care" and "extended period of time together´, the question is raised about how the IND use these definitions in practice, how they are operationalised during the investigation phase, and in what way and basis is the information tested.

In the policy for travelling in connection with family reunification, it is stipulated that biological and foster children (minors and children who have come of age) in any event no longer belong to the family of the parent in the Netherlands if, before the departure of the parent, the family connections can be considered to have been broken. In any case, this can be considered if one or more of the following conditions are true:

1. the child has been permanently taken in by a different family than that of the sponsor;
2. the child intends to live independently;
3. the child has his/her own family through marriage or another relationship.[19]

For a long time, in terms of foster children, the family connection was considered to be broken if the child was "taken in" by another family. The requirement that this was a "permanent" taking in by another family, such as with biological children, was not applicable to them. After the Raad van State (RvS) (Council of State) ruled on 10 October 2012 that this distinction between biological (broken by being permanently taken in by another family) and foster children (broken by being taken in by another family) should not be made[20], The IND made it known that this was also applicable to foster children who had been "permanently" taken in. However, the Vreemdelingencirculaire (Aliens Act Implementation Guidelines have not yet been amended.

For minors who are married, the applicable rules are the same as those that apply to children who have come of age. A minor who marries is seen as a child that is forming their own family, and that is a reason to believe that the family connection with the parent is broken.

Depending on the case, it will be evaluated whether the child has been (permanently) taken in by another family. This definition is further elaborated in the policy. For this, there is also no minimum period.

It is not possible for children to reunite with an older brother or sister (who has been granted asylum in the Netherlands) under the policy for travelling in connection with family reunification, because only parents are eligible to have their children come. No exception is made for this, even if both parents are deceased.

[18] For regular migrants, family life is interpreted as described in article 8 of the European Convention on Human Rights. During legislative consultation, Secretary of State Teeven has acknowledged in his letter to the Tweede Kamer (Lower House) on 15 April 2013, that this results in unnecessary ambiguity; in a letter to the Eerste Kamer (Upper House) on 2 April 2013, he announced that the definition in the ECHR would also be used for family members of refugees who wanted to travel for the purposes of reunification.
[19] Vreemdelingencirculaire (Aliens Act Implementation Guidelines), paragraph C2/4.3
[20] Administrative Jurisdiction Division Raad van State (RvS) (Council of State), 10 October 2012 (see appendix 2)

2.3 How the IND establishes a family connection

When a family submits an application for reunification, the IND has the duty to evaluate compliance with the criteria set out in law. This means establishing whether there is (was) an actual family connection and whether it came into being in the country of origin. Since 2008, the manner in which the IND investigates this has been amended several times.

Document investigation

In order to establish the family connection between the parent and the child, some principle documents must be submitted that detail the family connection.[21]
The IND does not track how often a document investigation is carried out for travel in connection with family reunification involving children. However, they could be included in the following general figures, which apply to cases of both adults and children:

Table 3: Number of document examinations carried out by the IND between 2008 - 2011

2008	2009	2010	2011
10,630	12,740	10,330	12,970

Source: Immigration and Naturalisation Service (2012)

In addition, the case file investigation carried out by the Ombudsman for Children yielded the following results:

Table 4: Results of sample document investigation by the Ombudsman for Children 2008 - 2012[22]

	2008	2009	2010	2011	2012 (until August)
Sample number of document investigations for minors	30	28	18	37	4
Total number of applications in the sample	343	569	336	254	85
% of the total number of applications in the sample	8.7%	4.9%	5.4%	14.6%	4.7%

Source: sample investigation carried out by the Ombudsman for Children

For refugees, there is no obligation (under conditions) to submit documents.[23] For some of the children and parents who submit an application to travel in connection with family reunification, it is not possible to submit documents because the authorities of the country of origin will not provide these documents (e.g. in the case of Somalia) or because they are not considered by the Dutch government to be reliable. If the lack of documents is not attributable to the parent, then they are "unable to meet the standard of proof" and the identity and family connections will need to be proven in another manner by the person making the application**,** for example, by carrying out a DNA test or making statements during an identification hearing.

[21] Vreemdelingencirculaire (Aliens Act Implementation Guidelines), paragraph *C2/6.2*
[22] It is important to note that a document investigation is only carried out for applications by non-Somalis. However, the sample also contains applications from Somali children.
[23] Article 11 of the Family Reunification Directive states that an application should not be rejected solely on the basis of the lack of documentation.

DNA test

Before 2007, in the event of applications for travel in connection with family reunification, the Dutch government carried out further investigation on the family connection between the child and the parent in the Netherlands. It was possible for a DNA test to be carried out, but this was hardly done in practice. The statement of the parent in the Netherlands and documents submitted at that time were used as the main body of proof. In 2007, it was decided that a DNA test would be used more often to determine the biological relationship between the parent and child in applications for family reunification. In practice, few additional questions about the family connection were then asked. A positive result on the DNA test generally led to a link for the purpose of the application. The IND does not record how often a DNA test will be used in the context of an application for travel in connection with family reunification. However, they were able to provide the following general figures, which just provide a picture of the initiated (not actually carried out) DNA tests:

Table 5: Number of DNA tests initiated between 2008 - 2011[24]

2008	2009	2010	2011
580	1020	370	260

Source: Ministerie van Buitenlandse Zaken (Ministry for Foreign Affairs)

The sample of the case files from 2008 - 2012 that were investigated by the Ombudsman for Children yielded the following results:

Table 6: Results of sample DNA test by the Ombudsman for Children 2008 - 2012[25]

	2008	2009	2010	2011	2012 (until mid August)
Number of DNA tests for minors sampled	195	252	67	84	14
Total number of applications in the sample	343	569	336	254	85
% of the total number of applications in the sample	56.9%	44.3%	19.9%	33.1%	16.5%

Source: sample investigation carried out by the Ombudsman for Children (2012)

Identification hearing

In 2009, the policy concerning family members of refugees who wanted to travel for the purposes of reunification was tightened. As a result of an increase in the number of applications made by foster children (in particular by Somalis), the Ministry and the IND began to have suspicions of fraud. It was decided that a DNA test would no longer be offered to those who applied to travel in connection with family reunification. This stricter policy not only had consequences for Somali requests, but also for applications from children of all nationalities

[24] Rounded up to the nearest ten
[25] It is important to note that a DNA test can only be carried out on biological children. This sample also includes foster children.

who called upon the procedure for travelling in connection with family reunification. Despite the introduction of more stringent standards, such as those announced by the Secretary of State in a letter to the Tweede Kamer (Lower House)[26], only applying to foster children (with whom, according to the IND, most fraud took place), the VluchtelingenWerk (the Dutch Council for Refugees) saw signs that this was also being applied to biological children. The investigation by the Ombudsman for Children appeared to show that fewer DNA tests were being carried out. In one IND work instruction, it was confirmed that the stricter policy also applied to biological children as well. In practice, a few months later it emerged that biological children were not receiving a DNA test and instead they were, in the first instance, taking part in a hearing. Only when the actual family connection was found to be plausible during the hearing was a DNA test initiated. The actual criterion for a connection was therefore reviewed more strictly: a biological connection was no longer considered sufficient to be eligible for family reunification. In the event that the identification hearing established that an actual family connection cannot be proven, this condition is not then met, and there is no further need to investigate whether or not the tie is biological. The application is then rejected based on the information from the identification hearing.

Since 2010, a biological connection is not sufficient for children to reunify with their parents. They are also required to attend a hearing to make statements and prove that they form a part of the family of the parent.

European legislation allows, in the framework of a family reunification application, interviews to be held with the sponsor and family members and for another investigation to be carried out in order to prove the family connection.[27] The European Commission has specifically stated in its report on the implementation of the Family Reunification Directive: "In order to be in conformity with Community law these interviews and/or other investigations are proportional, so that they do not negate the right to family reunification, and the fundamental rights, in particular, respect the right to privacy and family life."[28]

During the identification hearing, the family must make statements to prove that they actually formed a family with the parent seeking asylum in the Netherlands. The children from the family, the parent in the Netherlands, and any possible partner will be asked questions. The questions will centre around such things as, daily life before the parent left, the occupation of the parents, the living environment, and personal details of the different family members. The statements by the children and parent(s) will be compared to one another and rated per case and then evaluated to determine whether there is sufficient proof of a family connection. The purpose is also to ascertain whether there are indications that this connection may be considered broken, for example, the parent, without valid reason, has not lived with the children for an extended period of time, or that the child has now been taken in by another family. If the IND official in the Netherlands believes that he/she has found too many contradictions in the statements made by the children and the parents, or between the parents themselves, the child's request will be rejected.

The IND sets no minimum age for asking children to partake in a hearing. In the context of their application for family reunification, children of 12 years of age can also be heard, as described

[26] Letter from Secretary of State for Justice Albayrak to the Tweede Kamer (Lower House), 3 April 2009
[27] Family Reunification Directive (2003/86/EC), article 4 paragraph 2
[28] European Commission, *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification*, COM (2008) 610, 8.10.2008, p. 10

in an IND work instruction.[1] In practise, children under 12 years of age partook in hearings during 2011. In 2012, it was decided that, in the case of biological children, children under the age of 12 could no longer partake in the hearing. For foster children in current practise, no minimum age is set, and they may also take part in a hearing at a younger age.

The IND and the diplomatic posts are unable to provide insight to the Ombudsman for Children about the number of identification hearings that take place with children at the embassies as part of the application to travel in connection with family reunification. The sample of case files reviewed by the Ombudsman for Children between 2008 - 2011 yielded the following results:

Table 7: Results of reviewing sample identification hearings by the Ombudsman for Children (2008 – 2012) concerning biological, foster children and step-children

	ID Hearing	No ID hearing	Total
Biological children	97 (9.4%)	932 (90.6%)	1029
Foster children	175 (36.5%)	304 (63.5%)	479
Stepchildren	8 (11.9%)	59 (88.1%)	67

Source: sample investigation carried out by the Ombudsman for Children (2012)

In the results of the sample, only the case files in which the child is heard in the context of a family reunification application are included. Case files concerning children whose parent or siblings were part of a hearing about the family connection (but not themselves) are not included. However, the applications of children who have not attended a hearing themselves could also be rejected if, during the hearings of the parent or siblings, the parent or siblings were unable to provide sufficiently credible or consistent answers to the questions put to them by the IND.

[1] IND work instruction 2012/6, 25 September 2012

Changes in the investigation of the actual family connection between parent and child:

Before 2007: Statements by the parent in the Netherlands and the document investigation are used as the main body of proof; a DNA test is seldom used.

2007: A DNA test is more frequent: DNA test is increasingly used to establish the family connection.

2009: Tightening of the policy: DNA test no longer immediately initiated when a child submits an application for family reunification. The family connection must first be established through statements made by both parent and child during identification hearings.

2010: In practice, even biological children do not get a DNA test immediately; they will also have to prove the family connection first during identification hearings. Only once the family connection has been established will a DNA test be carried out.

2012: Biological children from the core family may require a further DNA test. A positive outcome does not prove that the parent and child had an actual family connection at the time of departure of the parent from the country of origin. Other children will still be heard.

2.4 The conduct of the procedure

When the parent has received an asylum permit to live in the Netherlands, an application for family reunification must be filed within three months after the asylum permit is granted. The family members must then submit a Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) at the Dutch diplomatic representation in the country of origin or the country of permanent residence (or, if there is no representation, a surrounding country). If the family members are untraceable at the time the parent submits the application for the asylum permit, a so-called MVV-adviesaanvraag (application for a recommendation concerning a Temporary Residence Permit) must be submitted to the IND, so that the three-month period is secured.[29]

In this case, the child must then physically report to the consular department of the Dutch Embassy to complete an MVV application and provide a passport photo. At that point, an official from the consular department will immediately estimate the age of the applicant. If there is any doubt about whether the specified age is the actual age, a note will be made of this. This information will be sent, along with the application, to the IND in the Netherlands. The IND will then decide whether the child should be invited to the embassy to take part in an identification hearing at the embassy. The IND also reports whether the embassy staff should carry out an assessment of the possible range of the child's age, often in response to doubt when submitting the application form at the consular department.

The child will then be, usually through a parent or another contact person, invited to a hearing by telephone.[30] Use will be made of an interpreter. The family members are told when they are expected to be at the embassy. All members of the family who have applied must come to the embassy on the same day. Therefore, the hearings can take place throughout the whole day. The applicants will also be told over the telephone to bring their own food and drink.
On the day of the hearing the child reports to the consular department at the Embassy, possibly with a parent, escort or brothers or sisters. They will be heard by the hearing official one by one (or when multiple hearing officials are available, at the same time). At the embassies in Nairobi

[29] Since 1 June 2013, due to the National visa laws coming into force, the refugee in the Netherlands can submit an MVV application, which invalidates the MVV-adviesaanvraag.
[30] Or in the case of biological children after 2012, the conditions under which a DNA test will be carried out.

and Addis Ababa (where many Somali children submit their application), an interpreter will be present to translate. The IND declares that: "work now also progresses well at the other posts since the embassy has hired good interpreters.[31]" Children are able to take their own translator to the embassy to translate into English, or the translation can be carried out by an official of the embassy. The interpreter translates the questions that are being asked by the hearing official (which are written in English) into the child's language and the child provides answers that are translated back into English for the hearing official, who then writes the hearing report in Dutch.

These hearings last on average between one and a half to two hours, including a break.[32] In some instances, the hearings take longer. The duration of the interview also depends on the child's age and the amount of hearings that are scheduled on that day, so state the hearing officials. Also, it depends on how much a child has to say. After all, if a child remembers nothing, the hearing will be over very quickly.

During the hearing, a lawyer or other legal counsellor is permitted to provide legal support to the child. The family members are heard separately. After all, their statements will be compared later. There is a difference in the way the child is handled by third parties (not lawyers and legal counsellor). The IND Implementation Consultancy department has prepared no policy or recommendation. The decision is left to the officials at the post. In practice, children do not often have a lawyer with them. Several times, lawyers have flown from the Netherlands to Addis Ababa and Nairobi in order to attend the identification hearing.

The hearing report is sent, along with the decision of the IND, to the parent in the Netherlands. That will be the first time the hearing report can be viewed. At the end of the hearing, the child will be told that a decision will be made in the Netherlands (and not by the hearing official him/herself) and that the parent in the Netherlands will be informed of the decision (and not the person attending the hearing at that moment).

A written hearing report is sent to the IND in the Netherlands by e-mail. This is not a verbatim transcript of what was said during the hearing, simply a representation of the questions and answers. The report will be published in Dutch. In addition to the report, the hearing official can send additional comments by e-mail, but this is not standard practise. For example, the hearing official may decide to share a recommendation or impression of the hearing with the case decision official. This varies with each hearing official. One of hearing officials interviewed stated that he limited the information he enclosed to the perceptions he gained during the interview, without drawing any conclusions.

The IND case decision official in the Netherlands compares the hearing reports from the spouse of the parent in the Netherlands and the children, to the statements that had been made previously by the parent in the Netherlands during their asylum hearing upon arrival in the Netherlands. Then the case decision official must evaluate the statements and make a decision about whether it has been proven that an actual connection existed between the family members. The children and the parent are expected to provide a "certified, credible and consistent" explanation about their family situation at the time they left the country of origin. In the event that there are "too many" contradictions and/or "essential points" are not sufficiently proven in the various statements made by the children or the parent, the family connection will

[31] Immigration and Naturalisation Service (2013) Correspondence with the Ombudsman for Children
[32] Interviews with hearing officials. This is consistent with observations made during a visit of the Ombudsman for Children to Kenya and Ethiopia.

be deemed to have not been proven and the application will be rejected on these grounds. When an actual connection is established, and there are no further grounds to reject the evidence, a DNA test will be carried out and the request will be granted. The child can then retrieve an entry visa from the embassy within a few weeks and come to the Netherlands (often with financial support from the Vluchtelingenfonds (the Refugee Fund)). Following which, the child should then apply here for a derivative asylum status. In the meantime, If there are no signs of fraud or abuse, the IND identification investigation will be considered as complete and a permit will be issued.

Objection and appeal

If the applicant does not agree with a negative decision by the IND, a notice of objection must be submitted. The objection will be evaluated by a complaints official. This is always a person other than the official who made the initial decision. In the objection, the applicant may explain the contradictions that came to light during the hearings. A decision to hold a hearing may be made in which the parent is invited to state their case orally to the Board of Appeal, which consists of two people. The hearing does not necessarily need to be held by the IND officials evaluating the objection.

If the objection is rejected, an appeal can, and possibly a higher appeal, can be filed with the court. The court will review the statements and assess whether there is marginal agreement on essential components. The Raad van State (RvS) (Council of State) has carried out several of these for various statements made during cases of travel in connection with family reunification. After the Raad van State, a route to the European Court of Human Rights is open. The national and international legal precedents are included in the appendix.

Time taken for a decision concerning a family reunification application

In the past there has been no statutory decision deadline for a decision on an MVV application. A decision must be made within a reasonable time according to the meaning of article 4:13 of the Algemene wet bestuursrecht (Awb) (General Administrative Law Act).[33] The Vreemdelingencirculaire (Aliens Act Implementation Guidelines) has set a deadline of three months.[34] Under article 4:15 of the Awb, this time period could be suspended for a reasonable and concrete term. Since 1 October 2012, the Wet op de Dwangsom (Law on Penalty) has applied to legal proceedings concerning aliens, which includes the procedure for travelling in connection with family reunification[35]. Before 1 June 2013, the IND decision had a period of 90 days to make the initial decision and 19 weeks to make a decision on the objection. After 1 June 2013, the IND had a period of 6 months to make the initial decision and 6 weeks to make a decision on the objection.

2.5 The tightening of policy after signs of fraud and abuse since 2007

In recent years, the policy concerning family members of refugees who wanted to travel for the purposes of reunification has been changed many times. Since 2007, there has been a strong emphasis on combating fraud and abuse in the procedure for travelling in connection with family reunification and the policy has been tightened several times along the way. The changes introduced since 2007 have been made, in particular, to the methods used by the IND to investigate the family connection: from 2007, more DNA testing was carried out (possibly with

[33] Article 5, paragraph 4 of the Family Reunification Directive provides a period of 9 months to member states.
[34] Vreemdelingencirculaire (Aliens Act Implementation Guidelines paragraph B1/1.1.1
[35] The Wet op de Dwangsom (Law on Penalty) came into force on 1 October 2009. The main purpose of this law is "discourage improper conduct of public bodies and to encourage timely decisions to applications from citizens." Until 1 October 2012, an exception was made for legal proceedings concerning aliens, but from that moment the exception lapsed.

some additional questions); but in 2009, it was decided that the investigation should be intensified and children (and their parents) needed to provide evidence in statements during interviews about the family connection, and a DNA test was no longer offered. Since 2009, the existence of a biological connection between the parent and the child is, in practice, no longer sufficient for them to be eligible for family reunification. The responsibility to prove the family connection was placed more firmly on the parent and the child. During the hearing, the parent and child must be able to demonstrate that they actually had a family connection before the parent departed. Therefore, this responsibility is also placed, in part, on the child as well. This is evident from the observations made by the Ombudsman for Children during the hearings held at the embassies. Prior to the hearings with the children, the hearing official would be heard to say:

"Today, we are here so you can convince me you have a family relation with the person in Holland."

The hearings demanded significantly more effort and moreover, the applications were more strictly evaluated: this means more rejections for fewer contradictions.

In 2009, signs of fraud and abuse came to light in the procedure for travelling in connection with family reunification, particularly by Somalis, which prompted the then State Secretary of State Albayrak to tighten the procedure on these points. In particular, an increase in the number of applications for family reunification of Somali foster children aroused suspicion: "The definite impression exists that the foster children that are described as part of the family are not, in all cases, actually members of the sponsor's family in Somalia at all." Wrote the Secretary of State to the House. [36]The Secretary of State stated in her letter that the large number of foster children can be partially explained because it is conceivable that, especially in a country such as Somalia, which is in a state of war, a larger number of children will lose their parents and be taken in as a foster child by another family. However, she also stated that the number of abandoned foster children connected to Somali asylum seekers, "even against that background, is considered to be high". Out of a sample from the IND of 75 of the 320 Somali families who submitted an application for reunification in January 2009, 60% mention at least one foster child in the application.[37]

Additionally, there are signs from the Centraal Orgaan opvang Asielzoekers (COA) (Central Agency for the Reception of Asylum Seekers) that some of those who came to the Netherlands for the purposes of family reunification, do not live together after their arrival. The Secretary of State states in her letter:

"According to information from the Expertisecentrum Mensenhandel- en smokkel (Centre of excellence for human trafficking and smuggling),[38] I have found that not all family members who travel to the Netherlands for the purposes of family reunification under a Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) report to the Application Centre, and not all await the outcome of their asylum procedure. This could indicate that they do not join the sponsor

[36]Letter from Secretary of State for Justice Albayrak to the Tweede Kamer (Lower House), 3 April 2009
[37] Letter from Secretary of State for Justice Albayrak to the Tweede Kamer (Lower House), 3 April 2009

[38] Expertisecentrum Mensenhandel- en smokkel (Centre of excellence for human trafficking and smuggling)

residing in the Netherlands and, therefore, may not actually be a member of the sponsor's family."

The IND has also seen signs of human trafficking and finger top mutilation, which is becoming increasingly common, from stories of their travel that are told by asylum seekers whose identities are unclear and untraceable. These signs constitute a reason to tighten up the procedure for those who travel in connection with family reunification:

"Taking this information into consideration, I deem it to be necessary and justified to take actions on this group to ensure that only foster children who already formed a part of the family in the country of origin of the sponsor qualify for travel in connection with family reunification. As much as possible must be done to prevent family members coming, or applying to come, to the Netherlands when those family members do not actually belong to the family. Therefore I deem measures for *foster children* who travel in connection with family reunification of great importance."

In 2009, suspicions of fraud concerning Somali foster children led to a tightening of policy towards all children, regardless of their nationality or their country of application. This tightening, contrary to what has been communicated to the House, also applies to both foster children and biological children.

The actual criterion for a connection is already established in law but hitherto, has not played a significant role in practice. That changes: the applicant must be able to demonstrate that there was an actual family connection upon leaving the country of origin, through the making of statements. Despite the signs of fraud and abuse being particularly applicable to Somali foster children, the tightening will apply to all children who want to qualify for travel in connection with family reunification, regardless of their nationality or the country of application. It is also striking that the Secretary of State stated to the Tweede Kamer (Lower House) that the tightening would apply to foster children, but a few months later, the IND work instruction told officials that biological children will no longer provided with a DNA test.[39]

Further tightening was announced by the Secretary of State in 2009[40]:

- Subsequently, family members not registered as a family member by the parent residing in the Netherlands during the asylum procedure are not eligible for travel in connection with family reunification. If a parent fails to register foster children in time, then there is no chance of travel in connection with family reunification.
- Additional proof that foster children who are still in the country of origin actually form a part of the family will be requested from the parents. They may be asked to make every effort to show that their foster child actually belonged to their family as well. Therefore, the burden of proof increased on the applicant and the alleged family connection between foster parents and foster children was not accepted as easily as before.
- Often there will be an objection in the event that the foster child actually no longer forms a part of the family, for example if there are signs that the foster child has been taken in by another family since the departure of the foster parent. These foster children are not eligible for travel in connection with family reunification.

[39] IND work instruction 2009/18, 24 August 2009
[40] Letter from Secretary of State for Justice Albayrak to the Tweede Kamer (Lower House), 3 April 2009

– For the time being, for Somali cases - opportunities will be sought to hear the parent residing in the Netherlands at the same time as the child seeking travel in connection with family reunification at the embassy, and/or the escort and other members of the child's family, in order to determine whether they are actually members of the same family. This will reduce the likelihood that the persons concerned have the opportunity to tune their statements in advance. If either of the persons concerned do not appear for the interview at the appointed time, this will have consequences for the admission of the foster child.

The high rejection rate following the tightening of the procedure, confirms the suspicions of the IND and Minister Leers of widespread fraud and abuse of the procedure for travelling in connection with family reunification. The interviewed officials involved in the hearings at the embassies in Nairobi and Addis Ababa state that they recognise this. For them, and for the IND in the Netherlands, the high rejection rate is no surprise. By conducting a more thorough investigation, it can be shown that many applications were submitted by children who did not form a part of the family at the time of departure of the parent - so the argument goes.

More applications will be rejected for family reunification and the influx of family members travelling for family reunification decreases, which demonstrates that the path chosen was the right one, so stated Minister Leers to the House in 2011.

At the same time, Minister Leers stated to the House: "These results are reflected in the figures. At this time (in 2011), fewer than 10% of all MVV applications for travel in connection with family reunification have been granted to Somalis from abroad. The approach we have taken to fraud has yielded good results and led to fewer applications to travel in connection with family reunification and more rejections of applications for travel in connection with family reunification. I consider it important to continue along the same path now it has been proven successful." [41]

2.6 Change to the implementation of policy in July 2012

As shown in Tables 1 and 2 in the introduction, the rejection rate has risen sharply since 2008, particularly amongst applications from Somali children. This has drawn criticism from aliens' lawyers and VluchtelingenWerk (the Dutch Council for Refugees). This criticism mostly concerns the manner in which the hearings with children take place and the grounds on which the IND rejects the applications. In July 2012, Minister Leers from Immigration and Asylum saw no reason to change the way the policy for travelling in connection with family reunification was implemented. According to the minister, the problems with fraud and abuse in the procedure for travelling in connection with family reunification were being tackled successfully.[42]

After July 2012, the actual family connection remained a prerequisite for travel in connection with family reunification. The identification hearing remains an important investigation tool for determining the actual family connection, but will no longer be standard for some children. The biggest change is that for children from a biological core family (father, mother and joint biological children), the combination of statements made by the parent in the Netherlands and the results of a DNA test will, in principle, provide sufficient evidence of the existence of an actual family connection in the country of origin. No changes have been made to the laws and regulations: the same criteria are valid for travel in connection with family reunification, which also includes biological children in a core family. They, too, still need to prove that an actual

[41] Letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 6 July 2011
[42] Letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 16 July 2012

family connection existed at the time of departure of the parent from the country of origin, but this will be considered plausible if there is evidence of a biological link within a complete core family. So the change is a change in the *implementation* of the policy.

In all other appropriate cases, when there is no question of a core family, identification hearings will still be held with children. For example, mixed families (with foster children or step children who form part of the family). In that case, both the foster children and the biological children will be heard. Biological children may be asked to make statements about the relationship between the parent and their foster brother(s) or sister(s). Even in the event of a broken home (where one of the parents is deceased, or is left behind in the country of origin), the children are heard.

Children below 12 years can even be heard, even after the change introduced on 16 July 2012, if[43]:
in the case of a foster child, there is no question of a complete family. For example, one parent remains behind or is deceased
and
foster children or stepchildren are included in the application and there are signs of fraud, for example, if there is any doubt about the age of the child.
There is a lack of clarity for lawyers about the indications of fraud and they state to the Ombudsman for Children that there is insufficient transparency concerning the basis upon which fraud will be suspected. When asked, the IND stated that any doubt about age, a difference in the statements made during the asylum procedure, or any other reasons, may give cause to believe further investigation is required, and providing an exhaustive list is not possible here. The applicant and lawyer are still not routinely informed of the reason why an identification hearing must be held. If the lawyer requests it, the IND will briefly explain the need for the hearing. It is not explicitly defined or further substantiated, an example is: "suspicions of (age) fraud".

At the time that officials of the Ombudsman for Children visited the embassies in Addis Ababa and Nairobi in November 2012, the hearing officials had not yet seen a drop in the number of hearings involving minors after the change in July.

No retroactive power

In cases that were running before 16 July 2012 where an identification hearing had already taken place, the findings that emerged from that hearing were factored into the evaluation as to whether an actual family connection existed. The same applies in those cases where only biological children are part of the application. When the hearing, if it had taken place before 16 July 2012, showed that the actual family connection could not be proven, the decision from the IND will be negative, even in the case of biological children. After all, the actual family connection criterion remains part of the law.
At the same time, the Minister acknowledges that in some cases, the possibility exists that members of the family are rejected. If this is not proven during the hearings, then the Minister may not, as he says, reverse the application decision. There are, at that moment, no factors that prove an actual family connection: "it is up to the alien to make the convincing statement."[44] Here it is further emphasised that the burden of proof lies entirely with the alien. In the case of

[43] IND work instruction and letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 16 July 2012
[44] Letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 16 July 2012

the procedure for travelling in connection with family reunification, this means that part of the responsibility for demonstrating the connection between the parent and the child lies with the child.

In 2012, the Minister does not see any reason to offer a retroactive DNA test in cases where an identification hearing has taken place.

No change in the implementation of identification hearings

In general, there are no changes in the way that identification hearings are carried out with children at the embassies or the way that the IND makes a decision in cases of travel in connection with family reunification. Minister Leers sees no reason for this. "During my mission to Kenya in the context of resettlement, I took the opportunity to attend a hearing about travel in connection with family reunification at the diplomatic post in Nairobi. Kenya is one of the countries where many applications to travel in connection with family reunification are submitted by Somalis. I have verified that the hearings are conducted in a careful manner and that the decisions are made properly. I do not recognise any of the criticism made by some organisations, which also appeared in the media, that the hearings take place in an unsound manner, or that they do not take the alien's circumstances into account."[45]. The Minister does however acknowledge that the hearing at the Embassy is very demanding on the child. "This means that in some cases, many questions asked in the context of the evaluation of whether the alien is eligible for travel in connection with family reunification, are also asked to the children."[46] The Minister has taken a number of measures to ensure the alien is better informed about the procedure and to ensure a more detailed report is submitted about the outcome of the identification hearings at the post.[47] What these are, and how they will be implemented in practice, is not yet clear.

2.7 The most recent change in the policy for travelling in connection with family reunification

On 2 April 2013, Secretary of State Teeven wrote a letter to the Eerste Kamer (Upper House) concerning a number of additional changes to the policy for travelling in connection with family reunification.

For the evaluation on whether there has been an actual family connection, the Secretary of State shall, from now on, be in line with the method of assessment that also applies to regular forms of family reunification. This means for children of regular migrants, not refugees, for whom until now, a different, less strict definition of the term family connection was applicable. In future, the definition of a "family life" as described in article 8 of the ECHR will be used for children of refugees who want to reunite with their parent. That includes, among other things, that the family connection - in cases of travel in connection with family reunification - will no longer be considered as broken if the child has been permanently taken in by another family other than that of the parent in Netherlands. In May 2013, it is still not clear how this policy change will be implemented in practice and whether, and to what extent, the nature of the hearings held at the embassies will change. Also, the Secretary of State does not state in his letter whether the policy applies to biological children as well as foster children.

[46] Letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 24 January 2012
[47] Letter from Minister Leers, Minister for Immigration, Integration and Asylum, to the Tweede Kamer (Lower House), 16 July 2012

In addition, the Tweede Kamer (Lower House) adopted an amendment to the legislative proposal for reunification on grounds of asylum that states the requirement for parent and child to have the same nationality to qualify for travel in connection with family reunification would no longer be valid. Also, there is no longer a requirement for the family connection to be established in the country of origin. This means that families that were established after departure from the country of origin, for example in a refugee camp, qualify for travel in connection with family reunification. A second amendment was adopted by the Tweede Kamer (Lower House) so children will get a dependent permit that can be withdrawn when there is evidence that there is no "real family life" in the Netherlands. The legislative proposal is, at the time of writing, in the Eerste Kamer (Upper House).

2.8 Conclusions

1. Unlawful restriction of the right to family life

The differences in the laws and regulations governing family reunification of refugees, and that are used to justify the requirements a family must fulfil in order to be eligible for family reunification, are not in the interests of the child. An example of this would be the requirement that the family must have already been formed in the country of origin. This, for example, would mean families from a refugee camp in a neighbouring country are not eligible for travel in connection with family reunification. Also, the need for the parent and child to have the same nationality. The Ombudsman for Children does not understand why these requirements are included in the law and does not see how they serve the best interests of the child. Therefore, they constitute an unlawful restriction of the right of the child to reunite with the parent.

2. Focussing on combating fraud results in the child's rights being lost

In 2011, Minister Leers and the IND believed that the rising rejection rates confirmed their suspicions that there was large-scale fraud occurring within the procedure for travelling in connection with family reunification. Based on the hearings with the parent and the child, the IND concluded in the rejected case files that there was no actual family connection at the time of departure of the parent and that the child had incorrectly applied for travel in connection with family reunification. The Ombudsman for Children doubts the plausibility that all rejected applications were indeed, as the IND asserts, fraudulent and that there was no family. The Ombudsman for Children believes that the rejection rates (rising to an average of 83% for all nationalities) are simply too high to be attributed to just fraud and abuse. The Ombudsman for Children sees little support for this reasoning.

The Ombudsman for Children finds that, since 2008, the policy regarding children travelling in connection with family reunification has been focussed on combating fraud and abuse. Based on signals that were not sufficiently explored, the policy was tightened, but with insufficient substantiation. Since 2008, the policy has become increasingly stringent and moreover, this tightening is also applied to all children who submitted an application for travel in connection with family reunification (both foster children and biological children, and children of all nationalities), even though the signs of fraud were particularly focussed on the suspicion that foster children from Somalia were the main culprits. According to the Ombudsman for Children, there is too little consideration given to children who should qualify for travel in connection with family reunification in taking the measures against fraud and abuse. They have also had to deal with a heavier burden of proof and the bar has risen for them as well. The measures taken in response to suspicions of fraud are not proportional, and moreover, the implementation of the

measures has led to major carelessness in the procedure, where the children have directly experienced the effects.

3. Disadvantage for Somali children

Since 2008, the vast majority of applications to travel in connection with family reunification have been submitted by children with Somali nationality. Applications were lodged at the diplomatic post in Nairobi (Kenya), Addis Ababa (Ethiopia) and Sana'a (Yemen). In recent years, the rejection rate among Somali children has been many times higher than for children of other nationalities (see table in the introduction).

Somali children are unable to meet the standard of proof: they have no documentation certifying the family connection with their parent because there is no recognised Somali government providing these documents. That means, in recent years, many of them have been required to undergo an identification hearing to prove their family connection to the parent. The Ombudsman for Children can see that, in these cases, a different working method for evaluating the family connection is required and questions the influence that the investigation method has on the opportunity for the child to present their evidence. The identification hearing is an intensive method and requires significantly more from the child. The Ombudsman for Children has also strongly criticised the manner in which the hearings take place, as further explained later in this report. Not only is more expected from Somali children than they can prove through their statements about the family connection, but the manner in which the identification hearings take place at the embassies also varies in Nairobi and Addis Ababa when compared to the hearings that take place at posts elsewhere. The hearings with Somali children occur on the basis of an expanded format with questions, while this format is not used at the hearings with children at other embassies. This means, in practice, that children of non-Somali nationalities get fewer and less-detailed questions, according to the analysis of the hearing reports between 2008 and 2012. Moreover, there is the question of whether Somali children are penalised later on in the procedure, during the decision making process for their application. The policy for travelling in connection with family reunification in recent years was focused on combating fraud by Somalis. The Ombudsman for Children is concerned about whether officials throughout the chain, both hearing officials at the embassy and the case decision officials in the Netherlands, can therefore objectively review the case files of Somali children and whether the interests of these children are overshadowed by a strong focus on fraud in this particular group. The interviews with the officials involved have not removed those concerns.

4. Recent policy changes have netted a limited improvement

In recent times, the policy for travelling in connection with family reunification and its implementation have changed them several times. One major change took place in July 2012. From that moment on, biological core families (consisting of both parents and their joint biological children) were offered the opportunity to have a DNA test carried out. They will no longer be heard at the embassy, provided there is no indication of fraud. A positive result from the DNA test provides sufficient plausibility that a family connection existed before the departure of the parent from the country of origin. This change is an improvement in the policy for travelling in connection with family reunification, but only affects a few children. Foster children, stepchildren and children from broken families are still heard at the embassies, and there have been no major changes to the manner in which these are carried out.

The Ombudsman for Children finds that, last July, Minister Leers was too quick in coming to the conclusion that hearings were taking place in a careful manner and that further improvements

were not necessary. There is insufficient, objective investigation into the way the hearings are conducted and no experts have been brought in to evaluate this. As a result of this investigation, the Ombudsman for Children has found, in contradiction with the Minister, material shortcomings in the way the hearings take place.

Additionally, last year, Minister Leers saw no reason to offer a retroactive DNA test to children who had been heard at the embassy in the period before the change. As a result, the Ombudsman for Children believe that this yielded an impermissible distinction between those children who applied before 16 July 2012 and those who applied afterwards. For those biological children who applied after 16 July, a positive DNA test is sufficient. For children who applied and were heard before 16 July, the evaluation is carried out (even if the hearing took place after 16 July) on the basis of hearing.

The Ombudsman for Children believes the changes, announced in April 2013 by the Secretary of State who is now responsible, offer a further improvement over the current situation. Many significant barriers to family reunification have been removed from the legislative proposal for reunification on grounds of family reunification. The announcement by the Secretary of State that the definition of the term "family connection" will be the same as that which applies to regular family reunification should mean a possible improvement in practice. According to the Ombudsman for Children, the many changes that were made previously show that the Dutch government is aware of the fact that a failed policy was adopted in recent years, and that the rights of the child were not adequately enforced. That increases the responsibility towards the children who have faced the failed policy in recent years.

2.9 Recommendations regarding legislation and policy

1. Connect the evaluation of family reunification applications by refugees to the definition of a "family connection" as described in article 8 of the ECHR, such as it is in the regular admission policy.[48]

2. Delete the requirement that the family connection must be established in the country of origin to qualify for travel in connection with family reunification.[49]

3. Delete the requirement that family members should have the same nationality to qualify for travel in connection with family reunification.[50]

4. Only for children whose case is still pending (including any objection or appeal), but which were heard before 16 July 2012, using the new working method and allow the hearings that resulted in rejection before 16 July 2012 be repealed.

5. Provide, under the terms of travel in connection with family reunification, the possibility for children whose parents are both deceased or have disappeared, to reunite with siblings who have fled to the Netherlands.

[48] Letter from Secretary of State for Security and Justice Teeven to the Eerste Kamer (Upper House), 2 April 2013. Proposal is currently pending in the Eerste Kamer (Upper House).
[49] See legislative proposal for reunification on grounds of family reunification
[50] See legislative proposal for reunification on grounds of family reunification

6. Give priority to applications from children who live unaccompanied by an adult or who face serious health issues.

7. Do not interview biological children as standard practise when their foster brother or sister will be part of the application for reunification, but only in the second instance if the statements of the parent in the Netherlands alone are not sufficient to prove plausible family connections.

8. Register how many objections are upheld, evaluate the considerations, and provide feedback of the results to both hearing officials as well as case decision officials.

9. Establish better insight into the effects of the policy on children by making use of better and more complete registration. For example, keep track of how many hearings take place at the embassies and, at registration, make a distinction between the applications and rejections of adults and children and biological and foster children.

3 HEARING

This chapter focuses on the implementation of the procedure for travelling in connection with family reunification and focuses on the practice of interviewing children. The question this chapter attempts to answer is: to what extent is the implementation of the policy for minors travelling in connection with reunification carried out in accordance with the UNCRC? The results obtained from interviews and case files will be shown combined in the paragraphs. The paragraphs will include questions about how informed and involved the child is, how the child is treated and how his/her statements are translated and presented in the report. Finally, feedback from the statements and the decisions on the child will be examined.

3.1 Children's rights criteria in hearing

Whenever the right to be heard is applied in practice, as happens with certain minors (or a family member on their behalf) who submit an application for family reunification, the implementation must meet international guidelines and the associated criteria (see box) of the International Committee for the Rights of the Child.[51] Therefore, these are used as a starting point by the Ombudsman for Children in the investigation of the practical implementation.

Basic requirements for the implementation of the right of the child to be heard
All processes in which children are heard, must comply with the following requirements.

The **information** that children receive about the right to freely express their views and to have their opinion taken into account, should be **complete and accessible**, should take into account diversity and be age-appropriate. The manner of participation, scope, purpose and possible consequences should also be explained.

Children must **never be forced** to provide their opinion and they must be told that they can stop at any time. The opinion of children must **be respected**. Adults who work with children must understand the socio-economic and cultural background of the children and their environment.

The issues upon which children can express their opinion should be **real and significant** to their lives and they must be given the opportunity to use their knowledge, skills and abilities. In addition, children must have the opportunity to raise and address things that they themselves find relevant and important.

The environment and working methods must be **child friendly** and adapted to the capabilities of the children. Sufficient time and resources must be made available so that children are well prepared and have the confidence and opportunity to give their opinion. Account should be taken of the fact that children at different levels must receive support and be involved, depending on their age and development;

Nobody should be excluded from participation, even those children who stand on the sidelines, girls as well as boys, must be given the **opportunity to be involved**.

Adults must be **supported by being given training** in listening to and working with children, and learning how to deal with children in a manner that is appropriate to their development.

[51] UN Children's Rights Committee, General Comment 12(2009), *"The right of the child to be heard"*, Art 134.

In certain situations, providing an opinion can be risky. **Adults are responsible** for the children with whom they work and must take every precaution to minimise the risk that children become exposed to the negative effects of their participation as much as possible.

It is essential that **appointments for follow-up and evaluation** are made. In any investigation or every consultation, the child must be told how their opinion will be interpreted and used, and when necessary, they must be provided with the opportunity to analyse the results and have an influence on the way they are put into practise. Children also have a right to receive clear feedback about how their participation has influenced the outcomes.

3.2 Structure and duration of the hearing

The identification hearing with a child can form a part of the identification investigation carried out by the IND. The requirement to hear a minor will be determined by the IND in the Netherlands. The hearing of a minor is an optional component in the procedure for travelling in connection with family reunification.

The purpose of an identification hearing with a child is to allow the child to make a statement about the family connection so that the IND can, partly on this basis, determine whether the child has belonged to the family at the time of departure of the person who is now in the Netherlands. The hearing will normally consist of an introduction, a series of standard questions will then be asked, supplementary questions and finally, closure.

A hearing with the child will take place in a room at a Dutch Embassy. In the "Somali embassies", the hearing takes place in small, modestly furnished rooms with a table and some chairs. In Addis Ababa they take place on the desk in the office of the hearing officials. In total, three people are present: the child, the member of embassy staff or the IND hearing official who records the hearing and the interpreter. The interpreter translates what the child says (in his/her own language) into English. The hearing official then translates the statements into the Dutch report, so they can be used by the case decision official in the Netherlands to make a decision. The responsibility for the design of the room and checking the way the hearing progresses lies with the hearing official.

Samira (16) talking about her hearing at an embassy: "It was very small, there was a table and there was glass, and a sliding door in the middle, there was water, a cloth, and on the other side a microphone. *(..) And it was a little scary, like you're somewhere where you have to stand trial, that's the feeling you get. It is a room with a sliding door and with glass. (..) You want to be at ease, just normal and not nervous, but when you go into that room, you are already nervous."*

Equipment with reference to hearing formats

The hearing formats are guidelines for the design and conduct of the hearing and moreover, also form the basis for the reporting. The interior of the hearing depends on where the child's hearing is held: at a "Somali Embassy" or somewhere else. There are two IND hearing formats for the establishment of a hearing for a child: a *standardised format* for use at so-called "Somali Embassies" and a *questionnaire* for the "non-Somali" or other embassies. The reason that the other embassies receive a less extensive *questionnaire* is, according to the co-designer of the IND formats, due to the following difference: officials at other embassies are often less accustomed to hearings, especially in the case of minors (because the standard of proof is less

stringent than in the Somali embassy) and they do not encounter foster children (mixed families) as often. Indeed, the IND makes the distinction in how extensive the questionnaires are: "Questionnaires for Somalis are more comprehensive because they are unable to meet the standard of proof and they need to be able to prove their identity on the basis of the questions. This applies equally to nationals of other countries who are unable to meet the standard of proof." What follows is a comparison of the two formats in terms of structure and language.

The standardised "*format"* has, since May 2011, been in use in the so-called "Somali Embassies". It has a fixed structure composed of three parts: details of the person concerned, details of the person in the Netherlands and further questioning. The format contains pre-printed terms to ask, with boxes to tick and additional spaces for an explanation, such as: "*Education: o No o Yes. Type:.....*" This Somali format is considered by the IND to be an improvement when compared to that used in the period before 2011. Before then, hearing officials rarely asked all the questions on the sheet and asked their own questions, which made the comparisons unclear and/or only of limited use. Decision makers had difficulty comparing the different statements from several children about several (sometimes partly missing) themes. Now, according to the decision makers, the questions are structured and better organised, which makes it easier to make a comparison. The structure yielded, in their eyes, time savings: shorter interviews compared to before.
The second type of format used in the "other embassies", is a written list of questions, such as "*Did you go to school?"* and will be called by the IND, *questionnaire*, because the officials there do not hold so many hearings and are not trained to conduct a hearing with the format. The case decision official fits this questionnaire to the specific case before it is sent to the embassy.

Language level
Although the hearing formats will be used at embassies for hearings with non-Dutch nationals, they are produced in the Dutch language. The formats form the basis for the report, which will also be produced in Dutch. The current hearing formats contain an introduction and conclusion, wherein the following abstract terms are used: *identity, nationality, procedure, independent interpreter, burden of proof, declaration of consent and indicative evidence*. Abstractly formulated paragraphs about the procedure have been found in half of all the hearing reports that were analysed.

Explanation taken from a hearing report with a 9-year old girl:
"that the interview relates to the determination of the identity, nationality and relationship to the foster parent(s)."

The explanation, if the instructions are pre-printed in the past tense, suggest the child has, by this stage, already stated: *"person concerned has declared (..) that the interpreter will be understood and understand.***"** Children often do not recognise that they have not understood an adult and if they can, they have insufficient resources to effectively participate.[52]
Children state in all the reports and observations to have "no objection" against the working method of the hearing, the age estimation and signing a declaration of being unmarried. Yet it is unlikely that there were actually no objections; given the statements made by children to the Ombudsman for Children, they remained silent because, for example they were afraid or did not understand that they had the right to make an objection.

[52] Saywitz, K., Snyder, L. & Nathanson, R. (1999 p. 58-68) in Dekens & van der Sleen, 2010 p.34.

The end of the "Somalia format" (pre-printed)
"Finally, the person concerned has been informed of the next steps in the procedure. *The person concerned has been informed that, among other things, the decision under article 3:41, second paragraph of the Algemene Wet Bestuursrecht (AWB) (the General Administrative Law Act) will be disclosed to the sponsor.*
The end of the questionnaire of the other embassies (pre-printed)
"I have told the person concerned that a report of the interview will be sent digitally to the IND/Visa Service in the Netherlands for an evaluation and decision to be made about the visa application. I have told the person concerned about the next steps of the procedure."

Both hearing formats are divided into a version for children who have come of age and minors. There is no difference in language between these versions. The official may choose to set out an oral question differently to that which is written, or the interpreter could convert the question to the child's level in translation. However, it is not clear from the hearing reports to what extent the language was adapted for the child on the spot. It has been seen from observation that some current hearing officials take advantage of the freedom to re-formulate questions into a child-friendly language, but this is not then reflected in the report.

The hearing formats are divided by gender, but these are identical to the references to "him" or "her". Besides the versions for minors not being broken down for different levels of development, it has been noticed in statements that, as children grow older, they provide more information during interviews about events they have experienced.[53] The responses of children of different ages may vary in such completeness that it is possible they produce contradictions on paper. Since the differences between statements are found at a detailed level, it is in the interest of the child to formulate child-friendly questions and write them down as required.

Hearing figures layout
The Ombudsman for Children has found, for children expected at a hearing at the embassy, that they are required to provide answers to many questions at a fast place and over a long period of time. On average, between 2008 and 2012, hearings lasted 93 minutes and an average of 163 questions were asked. In this time, they were asked to make statements relating to events that occurred on average, longer than 22 months previously. Children consider the hearing to be too long, to contain too many questions, and to be conducted at too high a pace in order to be able to properly reflect and give good answers. Moreover, the fear of not providing a "good" answer and then not being able to sort this out in time.

Given the impact that the hearing can have in forming a decision about the application, maximum concentration is required from the child throughout the entire hearing. The responsibility for this lies with the hearing official, who can determine the duration of the hearing, the number of questions that a child will be asked, and can adapt these to the level of the child's development, based upon conditions on the ground. "The more children from a family that need to be heard, the shorter the interviews are," states one hearing official.

The duration of the hearings in the sample of hearing reports from the period 2008 - 2012 was between 35 and 209 minutes, with an average of 93 minutes per hearing. Within these hearings, between 25 and 313 questions were asked, with the average number being 163

[53] Ornstein et al. (1997: 87-104) in Dekens & van der Sleen, 2010 p. 30.

questions. Breaks are rarely mentioned, some breaks lasted 5 to 48 minutes, with an average duration of 10 minutes. The pace is high, given the number of questions in relation to the time, but in reality is probably higher because the first minutes of the hearing are given to the provision of instructions, while the translation of the interpreter also takes time.

Omar (17) talking about whether children dare to ask for breaks: *"It's scary. You can't ask someone a question if you don't know you can ask it!?"*

Analysis

The Ombudsman for Children deems it undesirable that the IND uses two hearing formats for different diplomatic posts, namely: the embassies where Somali children submit their applications and other embassies. These formats differ in accuracy of the question formulation and speed in which the hearing (report) can be carried out and completed. Both formats contain abstract terms, such as in the question concerning whether children have an *objection* to the working method of the hearing. These terms have not been adapted to the level of development of a child.

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3.3 Which children will be heard

In the current practise of conducting hearings, the vast majority of children are past the age of twelve. Often, only the oldest children, or the one which is expected, will be called forward to make a statement by the IND. Foster children, as well as biological children may be required at the hearing, even if they are under 12 years of age.[54]

On the question of whether minors were all heard previously, the IND writes: "For some time prior to 16 July 2012, hearings for biological children younger than twelve years of age were stopped due to a commitment to VluchtelingenWerk (the Dutch Council for Refugees) by the then Minister for Immigration, Integration and Asylum. Children from 6 years of age were, in this period, not given a hearing as standard practise, but were heard by way of exception, for example, if there were no older children in the family." The analysed hearing reports show that hearings with children under twelve years did actually take place between 2008 and 2012. The sample included hearings with one child aged 6, three children aged 8, one aged 9, two aged 10 and three aged 11. Hearing officials and lawyers state that, albeit sporadically, hearings are still held with children aged 10 or 11.

Do you remember how you felt when you went to the embassy?
Sarah (9): *I was afraid*.
Afraid. Why?
Sarah: *It was the first interview.*

[54] IND work instruction 2012/6, 25 September 2012

Very young children "struggle to understand the elapsing of time and to make a statement about that."[55] Therefore, there must be a specific point for them to be able to make a statement. When a child provides incorrect information about the timing of a certain event, it does not mean that the child does this on purpose or that the rest of the statements are also incorrect. Up until adolescence, children have great difficulty with interpreting and evaluating perceptions, hence Dutch experts advise children under the age of 12 not to be heard.[56]

Children undergoing a hearing have a sense of the importance: children understand that it is important because they know that they can make a difference with what they say. This can make them tense. Some children compare a hearing to undergoing an "exam" and "as if you were doing a test." Children have the idea that their input can affect the outcome of the application.

Samira (16): *The pressure is great. If they ask you all these questions then you quickly begin to think, if I say something wrong, I won't be able to get back to my mother. These kind of things go through your mind while you're sitting there.*

Sarah (9) about how other children should prepare: *I would tell him that the interview is difficult and that they must listen to the question before giving an answer.*

3.4 Information for the child

This section covers the questions about how a child that is going to attend a hearing will be informed and instructed. "A clear and simple explanation at the child's level is crucial for the understanding of the hearing and the whole procedure from which the hearing forms a part."[57] At a hearing with a child, it is important that the child is able to provide the best possible answer. A child in a hearing finds himself standing in a strange place with an unknown adult; a special investigation situation. "Children may already realise that the hearing is important for what is going to happen to them in the future, and this may make them tense before they even begin. If the child is already tense, this will not contribute to the provision of optimal information."[58]

Instructions beforehand

Children say that everything about the hearing was new to them, that they didn't know where to begin. They felt unprepared. Some children felt that they were not provided an explanation of what was happening at the start of the hearing. According to the observations, hearing reports and interviews, the number of instructions given to a child during a hearing varied, ranging from nothing to a short list.

The observed hearings start with an introduction about the purpose of the hearing. The purpose of the hearing at "other embassies" – i.e. non- Somalia embassies - are pre-printed as follows: "the interview relates to the determination of the identity, nationality and relationship to the foster parent(s)." The purpose of the hearing are not provided in the hearing format (used at Somalia embassies), which means that the report content can be unclear about what the child has been told. It can be shown from interviews and observations that the purpose is explained differently by different hearing officials.

[55] Meulink, 2000 p.23.
[56] Meulink, 2000 p.28.
[57] Expert interview with Mr van der Sleen, January 2013.
[58] Expert interview with Mr van der Sleen, January 2013.

Hearing observations about the purpose of the hearing told to a child by hearing officials:

"We are here to establish your identity."

"You have applied to go to ... in the Netherlands and that is why we are asking you some questions about your family connection and life in Somalia."

"This (hearing) is an opportunity for you to convince me that you were part of a family with ... in Somalia"

"The hearing today is a very important part of the procedure that started when you applied for a visa to be with ..." (..) "Of course, I tell them that I am going to ask them some questions and they are here to answer them, that it is on them to be plausible. I think that is important to let them know that the ball is in their court. It is up to them how they reply."

The child is not completely informed about how his/her statements will be used as a part of the procedure. Because the statements of the child will be compared to those made during the hearings of the person in the Netherlands, the hearing official turns the hearing into an "adversarial process". Moreover, the child does not receive any feedback from the Embassy or the IND.

In both formats, there is a pre-printed explanation about the confidentiality of the hearing, the role of the interpreter and a few instructions, such as: "the child may say if the questions are unclear, or if he/she does not understand the interpreter". The working method will also be laid out: the report will be immediately translated and written up in Dutch. In both formats, questions are then asked about whether there are any medical objections that may prevent the hearing from taking place, objections about the working method, which language will be spoken with the interpreter, and whether the explanation has been understood and if there were any questions.

The child is told that the truth and completeness of the answers is important: "it is important that he/she tries to answer all the questions in as complete and detailed way as possible" (Somalia format) and "it is important that he/she tells the truth" (questionnaire for other embassies). However, the literature on hearings for young children advises avoiding repeated and emphatic highlighting of the importance of providing information, because it can affect the reliability of the child's statement.[59] In both of the current hearing formats, there is a lack of instructions to encourage the child before the hearing to feel relaxed and to make their statement, for example:

- The child can help the hearing official if the hearing official says something wrong or cannot be easily understood.
- The child may say if he/she does not know something. Assurance can be given that it is possible there may be answers that he/she doesn't know. And that all of this is OK. That the child should not make things up if he/she does not know something. [60]
- That the hearing official must sometimes repeat questions and that this does not mean that the child has said something wrong, but that the hearing official may have forgotten the answer or does not yet understand the answer well enough.

[59] Dekens & Van der Sleen, 2010 p 50.
[60] Dekens & van der Sleen, 2010 p.60-61.

The child is also not informed in the current instructions that an escort may be brought to the hearing. These are not often used in practice at the Somalia embassies because children are ill-informed. The IND has this to say: "The IND department responsible for providing advice about the implementation has not prepared a policy or recommendation. The implementation decision is left to the officials at the post." This is a possibility that the child should know about, because they can provide some support during the hearing.

Did you know what such an interview was made up of?
Mattheo *(17): I was afraid. I knew that they were going to ask me some questions and that later they may take me to my father.*
How did you know that?
Mattheo*: They gave us a short explanation. They said: we are going to ask some questions. If you answer them, we will take you to your father.*

Hearing officials state that they sometimes adjust the instructions from the format themselves, for example, by omitting certain abstract terms for young children: "you can speak freely and everything will remain confidential" and "do you have any objections against this interview?" explained one hearing official for example: "that means nothing at all to children."
An additional instruction from a hearing official to a nervous child: "you can't give any wrong answers, it is not right or wrong. You just have to answer the question. If you don't know the answer, you don't know the answer If you do, you do" This hearing official always adds that the decision is taken by someone in the Netherlands, so the child then understands that the case decision official is not in front of him.

It is possible for the child to say something in private and it will get to the person in the Netherlands via the report**: "**If they (the children) say to me: my father or my mother may not know this, then we will not include this in the report that the parent will see. It will only go on the internal comments." says a hearing official. Another hearing official says he does not know whether the child is aware that the person in the Netherlands is able to see the report, in each case he does not tell the child. The suggestion above that there is information that the child does not want shared with the (foster) parent in the Netherlands will be dismissed with: "Then it would be have to be a very explicitly phrased question, and we don't ask them."

Information at the end
According to some children, they are told by the hearing official that the decision is not made by the hearing official, but by someone in the Netherlands. How long it might take, it is not possible to say. The person in Netherlands may also be unable to tell the child how long it might take. Therefore, the child gets no information about the possible waiting time and is not informed, neither before nor after the decision making process, about how his statements were used.

In the current formats, children are informed at the end of the substantive hearing as follows: *"the report will be sent along with the decision about the application*." The child sometimes receives the report, and sometimes not, and sometimes only sees the report after the decision has been made.

In 15% of the hearing reports from the period 2008 - 2012, no follow-up action is described and it is questionable whether the child may have been informed about what is going to happen. Half of the reports end with an extremely abstract and legally formulated paragraph about the

rest of the procedure. What the sentence, *"The person concerned has been informed of the progress of the procedure"* actually means is not contained in the report and is not available for the child to read. In both formats, it is not standard practise for the hearing official to check the extent to which the child has understood the explanation and instructions. It is asked, but that's different to a check of real understanding.

Andrew (16): *We thought we would have to move fast, three months, four months after the interview, fill in the forms, submit the forms. But it is already two years.*

Analysis

Differences in instructions in the formats and between hearing officials means that not every child gets the same important instructions. The Ombudsman for Children has found that there is not enough comprehensive and transparent information about the procedure, as well as a lack of clear instructions about the child's rights during the hearing. There is a lack of (rights) assistance during the hearing. The children who are heard, tell the Ombudsman for Children that they were not, or were insufficiently, informed and instructed about the contents of the hearing and the role this hearing played in their procedure,. They told the Ombudsman for Children that they had expected to leave soon afterwards, but that their expectations had since changed. How much influence their hearing actually had on the entire procedure does not become evident to most children. Children say that they suffer from the pressure they experienced when answering the questions and their fear before and during the hearing, as well as at the end about the consequences of their answers.

3.5 Content of the hearing questions

A child will be asked about many different themes during the investigation of his/her "stated family connection". Questions may be asked about names, dates of birth and religion (his/her own as well as that of the (foster) family members), education and work of family members, but also about changes in (wider) family circumstances such as marriages, births and deaths. In addition, characteristics of family life before the sponsor left will be asked about, such as the neighbourhood, the house, daily life and how tasks were performed.

The questions for children are not presented in a child-friendly way. Children provided examples of "weird", "faint", "irrelevant" and "tiring" questions during their interviews with the Ombudsman for Children. The hearing reports from between 2008 and 2012 contain questions that are related to a theme that is not appropriate for the children's age and that are literally written out and formulated in an extremely abstract way.

Sarah (9): *I was small and did not know I would get questions about the children of my stepfather. I didn't want to talk about my stepfather's children.*
Ismael (15): *Where do you live? How did you get here? How long does it take to drive from where you came from? Is your father alive or dead?*

There are differences over the questions that a child will be asked: the travel story is standard in some interviews at other embassies whereas at Somali embassies, the question is "no longer relevant" according to one case decision official. The question "why do you want to go the Netherlands now and what are your future plans?" is missing in the Somali format. In only 6% of the analysed hearing reports does the question of what the child wants come to the fore. In short, not all children are asked what they want and why.

The colour of the car
Mattheo (17): *They asked me, do you have a car and I said yes, and then they asked what the colour of the car was.*
Do you find it strange that they ask about the colour of the car?
Mattheo: *At that time, I could not remember the colour. But I was very much aware that I did not know, so I guessed.*

Interviewers may ask children to draw a map of the house, possibly with help from the interpreter or the official. Some children point out that they are unable to read or write. In one report, it states that the hearing official attempted to make a child draw his house (about which the child had already stated he knew little) by asking whether the child would like to draw his house if the official did this as well. The official first drew and described his home in the Netherlands. Following which, the person concerned drew a stone house with two toilets and a t.v.

Easy misunderstandings can be made about a drawing, as noted in the observation: the child placed stripes in a row: I I I I I which seems to represent 4 rooms. However, the child sees each stripe as a room (5).
The question is whether the children have sufficient knowledge of what a "map" actually is; the evaluation of the correctness of a map is left to the interviewer. Children in the Netherlands receive lessons about understanding and drawing maps at primary school from about 10 years of age.[61]

Adnan (18) about which questions he remembers: *"What was the colour of your neighbour's door in Somalia? Imagine looking out of your window, what do you see? And if, for example, you answer: I see trees, then they ask how many trees and when you say I see buildings, they ask how many buildings? (..) I could not answer how long the street was, or how many streets there were at all. How many trees there were, how many buildings there were - I could not answer these questions."*

Analysis
Children said that the questions were, among other things, weird and irrelevant; and hearing reports suggest a high level of abstraction. The Ombudsman for Children notes that a considerable number of questions do not appear to be sufficiently aligned to the children's age and development. Deriving statements on the basis of a child's drawing does not seem very reliable in this context.

3.6 Hearing official

Education
Some hearing officials that were interviewed in Somali embassies had years of experience with hearings before they came to work at the embassy; however, many had not. The last group received one working week of training in conducting a hearing (among other things, for minors) and received further training "on the job", so they said. Some hearing officials were recruited from the local expat community. One of them was already employed to carry out maintenance

[61] Expert interview with Mr van der Sleen, January 2013.

work for the Embassy when he was recruited without any experience to work as a hearing official.
The officials at other embassies did not receive training for conducting a hearing, they received instructions about the questionnaire from the IND case decision officials. The IND writes that hearing officials working in the embassies in Addis Ababa, Nairobi, San'a and Kampala, received training in interviewing children by two IND officials who also worked in Addis Ababa as a hearing official themselves. In addition, the IND states that, during the training, there is much interactive talk about conducting a hearing with minors; and the trainees and IND officials also attended hearings together. As a result, the hearing officials received feedback and tips.
Interviewed hearing officials work together to work out themes that are relevant to the questions they ask children from the same family. In the event that here are multiple interviews per day, especially when it concerns the same family, it is imperative that they work together and follow the same path. Two hearing officials solve this problem by maintaining contact via mail throughout the hearing. Concerning the quality of the hearings, they themselves find that no checks are carried out, neither by attending each other's hearing, nor by reciprocal exchange with other embassies. In addition, there is no systematic on the job training or further training taking place. Several officials need that though.

Attitude during the hearing
Children did not expect to be interviewed by *"a white man"*. Asked to describe the official, they particularly note the amount and speed of the questions as well as the repetitions. Also, there is a sense of "2 (official and interpreter) against 1 (child)". All children felt an overarching fear caused by the new situation and the pressure to respond. Children have different experiences of the attitude of hearing officials at the various embassies over the years: from disrespectful to friendly. Disrespectful, because one boy stated that he had been threatened with being sent away because he was unable to provide any answers. Friendly because of the open and calm attitude, so said the children. Most children say they did not know that the person in front of them was not the one who made the decision.
A characteristic of a hearing is the one-sidedness; in this case, the official asks questions and the child responds. This shows that the official gave active direction to the hearing. "The hearing official can influence the child by paying attention to his own attitude and the way he communicates with the child".[62] An attitude that is too direct can increase the risk of the child becoming uncooperative.[63]

Or the hearing takes on the character of a conversation, depending on the attitude of the hearing official. The person needs to find a balance throughout the hearing, on the one hand hearing the case based on the rights of the child, while on the other, considering the case that must be resolved. Being too focused on the case by asking too many case-related questions at speed, while at the same time ignoring signals from the child, does not get the best out of the child or comply with the agreed structure of the hearing. The challenge is to find a good balance between conviction and credibility with respect to the child and his/her statement.[64]

Three observed interactions during the hearings (2012)
Hearing official: Do the boys and girls sit together in class?
Child: *I can't remember.*

[62] Meulink, 2000 p.33.
[63] Kievit, Tak & Bosch p. 129.
[64] Dekens & van der Sleen, 2010 p.78.

Hearing official: How can you forget whether there were girls in your class?
Child: *It's been a long time ago, that's why.*

Hearing official: When was the second time you left the house?
Child: *I can't remember* (translated as: "I don't know")
Hearing official: Can you try to give me an estimate?
Child: *If I knew, I would say.*
Hearing official: Now, it could be anything: 14 years, 1 year, it would be helpful for me if you could give me an estimate.
Child: *If I knew, I would say.*
Hearing official: Could it be 10 years, or 2 years?
Child: *I cannot give you an estimate.*

Hearing official: How did he die?
Child: *I don't know.*
Hearing official: Why don't you know how he died?
Child: *Because I did not ask how he died when they told me he had gone back and died.*

The Amsterdam Court noted in 2011 that there were communication problems between the hearing officers and family members. In the hearing report it was noted that the case worker had twice found that the story was completely incoherent and could not be followed. Even though the family members had stated after the hearing that they had understood the questions and the interpreter, this was not sufficient to establish whether there were any contradictions, added the court.[65] (see also appendix 2)

Interview technique

The UN Children's Rights Committee states that a hearing should have the character of a conversation, so the child feels at ease.[66] Asking questions that are necessary yet may also be painful for the child, can be mitigated with the use of various interview techniques, such as introducing a "difficult" subject. From the hearing observations, it is shown that there are differing methods in introducing questions about traumatic events, such as how a parent died, and that most officials that were observed did not respond to what the child said, despite the child's information being very sensitive.
In the analysed hearing reports, no introduction has been found to questions about shocking events in the child's life. Only a few reports mention an empathetic response to a child's statement. This raises the question whether these reactions were actually more frequent.

Saralie (17) talks about her experience:
"The biggest problem I have is, because I was raped in Somalia and I got pregnant, this fatherless son. They interviewed me, everyone said "what's wrong with your stomach?" even during the hearing they said it. I also told them that I wanted to show my belly. I could remove my clothing. They said "no, never mind." That's where I am with it: I have a fatherless child. I am constantly thinking about my future."

Hearing officials do not see it as their task to ask about the reason the parent fled and they want to be perceived to be as neutral as possible, they would prefer not to know certain things so the

[65] Rb Amsterdam, 11 November 2011, nr. 11/22096, r.o. 4.3.
[66] UN Children's Rights Committee General Comment 12 (2009), *"The right of the child to be heard"*

child does not think the official is biased as a result of prior knowledge. A child will provide all the information they know about an event, and the reason the parent fled will be known by the parent. It seemed that these often impressionable events in the life of a child were unknown to the hearing official in our observation, which meant the child had to recall painful events. If it is known that a parent is dead, it is not necessary to ask child the age of the parent, which will avoid inflicting unnecessary pain on the child. For example, in the following hearing observations at the Somali embassy:

Hearing official: "How old is your father?"
Child: (..) "He is dead."

Hearing official: "Your grandmother, where does she live?"
Child explains that she is no longer alive.

There is a contrast between how the hearing officials approach painful questions. To the question about whether special care should be taken when asking about traumatic events a child may have experienced, one hearing official states, it cannot be known whether the children may have experienced violent events. The official never asks about that. Other hearing officials state that some of the best questions are the ones that are painful for the child.

Hearing official: *"in principle, we do not ask painful questions, we try to establish the family connection, through the interview"*
There are no painful questions on the format?
Hearing official: *"No."*
..but there are questions that may appear painful when you look at the child's reaction?
Hearing official: *"Yes."*

Hearing officials state that children sometimes cry during the hearing. In five of the 67 analysed hearing reports, there was a report of the child crying either during or after the hearing. In one report, the hearing official explains: "I know it's not pleasant, but sometimes I must ask difficult questions."
In addition, this occurs with children who have been through a lot. For example, the Ombudsman for Children has gathered the following list of events that may (have) be(en) traumatic for a child from the hearing reports (2008-2012):

- Flight of a family member
- Death of an uncle/father
- Murder of father/mother
- Abandoned by mother
- Bomb attack on the family home
- Parents killed in a shooting
- Death of a grandparent
- Thrown overboard from smuggling boat
- Being shot at
- Father in jail
- Explosion following grenade attack on the family home

Zarayda (14) about what she was asked: *They said: "Where is your mother, where is your father?" I told them that my father had died. After the death of my father, my mother disappeared and my brothers lived with my aunt.* (..) *when they asked me about my mother and my father, that hurt.*

The Ombudsman for Children noted in the hearing observations from hearings held at the embassy that this was not managed in a standard way because of the failure to introduce the subject. One hearing official claims to be able to tell if a child has suffered a traumatic background:

Do the children know the consequences of repeated answers of "I don't know."?
Yes, but you already know what this is, so you increase the pressure a little. You also have children who have some experiences and they have a block, that they really do not know. (..)
Do you make a distinction: do not know because of "trauma" or do not know because of "tactics" or something else?
You see it. In the child's efforts.
After one block and the other is thinking "ha, next question".
I do report that. Because then you ask all kinds of questions: so are you in school, in which class, what subjects, how many hours do you have for this and that subject? Then I say that it's weird you remember, that's four years ago as well, you know. It seems strange that you know that. Something simple from a school. And then quite often they say: oh, in fact it just came to mind. Or they say I don't know, really.

Do hearing officials have a tactic to get to the truth without putting a child under pressure? Hearing official: "No. You often see that a child tries to make it easy for themselves by saying "No, I really do not know, I was a child, I was still too young" when they are asked very simple questions. To this, I usually say: "Ah, come on, you can still remember!" Now and then, this will almost always produce an answer. (..) It is also quite often laziness, they think "if I say I do not know, I can get out of here quickly." You see that in every child, also in how relaxed the interview is, so happy, "phew", that it's over. Even if it is relaxed, there is still a lot of tension in the background. So maybe if you say "huh, well, I do not know I was so young, I was still a child," you think, "hooray, next question" this often has a lot to do with it"

The opinion of the hearing official
Hearing officials from the period 2008-2012 regularly made their opinion known by acting surprised, responding or even making their own interpretation. There are many examples of this in the case files:

"Are not you too big to sleep in the same room as your sister?"

"It's not easy to leave your country. Moreover, it is probably not so long ago. It seems to me that you should be able to remember one month at least."

When the hearing official asks how long a certain journey took and the child answers, "I do not know", the official asks: *"You saw it with your own eyes?". Child: "Yes. I think I remember that it was probably one day travelling."*

The hearing official asks the person concerned whether the family had ever fled before. The child explains that he was young, and simply did what his parents told him and that he does not know. The official notes*: "You're 15 years old and you have eyes. I think you ought to able to tell if you left your home or not. "* The child then states that he does not believe to have ever fled, apart from this time. Afterwards, the case decision official appears to consider this to be an inconsistency, upon which he partly bases his rejection of the application.

In the autumn of 2012, it was observed how hearing officials could be steered by the answers they heard. Dekens & van der Sleen recommends that leading questions and comments be avoided, as well the asking of too many case-related questions over a long period.[67]

Abdul (18): *"If I say I cannot remember, I do not continue with that. He (the hearing official) also said, 'if you do not answer the question correctly, the Dutch government will not ,uh, take you in.' (..) If I insisted, 'I could not remember', he would quite often say something like: 'we need to know if she is your foster mother and if you continue with answers like, 'I do not know' or 'I cannot remember', it will not be clear to us.'"*

Analysis

The Ombudsman for Children has noticed that several officials involved in the procedure, employed by the IND and the investigated diplomatic posts, are not adequately trained to carry out their task in a careful manner in accordance with the UNCRC. They carry out both the investigation of the family connection, as well as the evaluation of statements made by children. The experience of the hearing officials varies from very limited to years of experience conducting hearings with children. The observed hearing officials had a predominantly case-oriented attitude toward the child when they were observed, while experts advocate using an attitude that is midway between case-oriented and child-oriented. For certain themes, the phrasing of questions does not take sufficient account of the shocking events that may have taken place in the immediate environment of the child. Especially when looking at examples of these themes, there appears to be a lack of appropriate interview technique utilised.

Most embassies do not have enough officials who have been trained to conduct hearings. Advice is, and has been, given by hearing officials about how questions are asked and yet they still express disbelief regarding the children´s statements. This encourages children to guess, they say. Hearing officials then send their recommendations to the decision makers in the hearing report or in an accompanying e-mail (or both). This is further explained using the examples in the following section. The Ombudsman for Children believes the approach of the hearing official towards the child is not always sufficiently objective.

3.7 Development level of a child

In order for children to be credible when they are explaining actual events, the interviewer should be aware of the child's development level.[68] If not, this may have consequences on the credibility of the statements. Not because the child would lie, but because the child does not understand the question or does not know the answer, yet feels under pressure to answer anyway. In the observations, for example, questions were asked about the family connection from a few years back without the hearing official being aware that this was such a long time ago. When a child has stated to not know the answers to a series of questions, all the questions

[67] Dekens & van der Sleen, 2010, p.63.
[68] Perry & Wrightsman 1991:257 in Meulink 2000 p.22.

from that section will have been be considered completed. A hearing official encourages memories from a child: "I know it was a long time ago. I understand that you probably do not know a few things, or you may have forgotten a few things; this is quite normal, but try to think as much as possible about what you can remember." Interviewed hearing officials say that their expectation about whether a child should be able to answer a question is linked, among other things, to the amount of time that has elapsed since the sponsor left. This is the "reference date of the actual connection" and the questions are related to that. This means that an understanding of the level of the child's development, including their memory, plays an important role: a hearing relies on the memories of the child and "the manner in which a child saves and retrieves memories depends on cognitive development."[69]

One hearing official relates to the child's ability to answer the question by asking himself: *"would I be able to answer this question if I were ...?"*

Even if the (estimated) age is known and the physical appearance and behaviour of the child seems to confirm this, it does not mean the level of development is sufficient. This is because not all children who attend a hearing are (were) attending school. Some children may have been born with learning difficulties or cognitive impairment. In addition, events may have occurred in the child's life that are so shocking that may they have (had) a serious affect on the child's development. The child may demonstrate behaviour that is appropriate for a younger or older child, yet their level of understanding may not (strongly) reflect that which is expected from a certain age of a child. In traumatised children, their memory and concentration may be disturbed. It also happens that a child "clams up" and says nothing.[70] Moreover, "children with behavioural, emotional or learning disabilities very often suffer from a delay in their language development".[71]

During the hearings, children are questioned about a variety of topics about the family connection that existed before the departure of the parent from the country of origin to the Netherlands. For many children, this means that the time of the hearing is several years in the past: the date of the hearing in the qualitative sample has been found to be between 11 and 54 months after the sponsor left the country, with an average time of 22 months. A child is required to answer detailed questions about the period *before* this departure, such as the parent's clothing on the day of departure, the colour of the window and the material of the walls in the bathroom. It seems that, after this long period, it is no longer realistic to expect the child to be able to answer these questions in this amount of detail. If the child has seen the parent more recently for example, this memory will be stronger than that of the day the parent left.

Councils and guesses

In the hearing reports, children often replied "I do not know" to questions about: school hours, the date of departure of the person who is now in the Netherlands, the duration of travel time or how long they lived in a certain place. Sometimes these questions can be too difficult even for adults to remember, for example: "Over what period did your parents live in Sierra Leone together and did they stay together in the same house every day?" Child: "I can't remember." One way to influence the child during a hearing, according to Dekens & Van der Sleen, is to give the child the impression that the child is giving the hearing official information that the child

69 Perry & Wrightsman 1991:70-77 in Meulink 2000 p.24.
70 Meulink, 2000 p.36.
71 Kievit, Tak & Bosch, 2002 p.132.

thinks the hearing official wants to hear.[72] A hearing official can obviously ask more questions about a statement if it seems to be a contradiction, to be sure that the child remains true to his words.

Omar (17) *Children have so much fear of rejection that they will even tell you things or give answers that do not even exist.*

Children say they felt anxious and under pressure to provide answers during their hearing, partly because of the pace and quantity of questions. Children say that an unanswered question is treated as an insufficient answer: then it will be repeated or reformulated later. This may mean an estimate may be requested and later, maybe even a *ballpark* estimate may be requested. Or questions may be asked about the date before or after a certain event, or when they were in the presence of a particular person.

Was it literally said: "You must provide an answer now"?
Mattheo (17): *"It was not literally said, "you must answer the question" but it certainly seems that way, then you have to answer a similar question, if you give an answer to another question, which has something to do with the questions that you couldn't answer, further questions are asked afterwards. "if you could answer that question, why could you not answer this question?""*

Children say that a lot will be repeated if they say they do not know something. So the pressure was and is increased and they get the idea that they have to start guessing. This is regularly called guessing by the children. Guessing makes them anxious and uncertain during the hearing, and afterwards as well.

[72] Dekens & Van der Sleen 2012, p.36.

Have you ever guessed an answer?
Sarah*(9): Some questions I just answered and others I guessed.*
Do you remember any of the answers you guessed?
Sarah*: I guessed many answers, for example, about the windows of the house, the carpet, the plastic on the floor, the light, the electricity and the bus that we always took to Elasha, which is after Mogadishu.*
What was the question about the window?
Sarah: *How many windows are there in the house? I said just one.*
(..) Why did you guess that answer?
Sarah*: Because they wanted an answer, that's why I said what I said. Sometimes, I can't remember the window anymore.*
Did you tell the hearing official that you had guessed the answer?
Sarah*: No.*

Age estimation by embassy staff

in the Netherlands, the level of development as well as the school class is one of the ways that the age of a child can be estimated. The IND cannot adopt the ages on Somali passports because these passports will not be recognised. The age is therefore an identity characteristic that will, if required, be recorded during the investigation by the hearing official. At the embassy, this is called an age estimation.

The need to the estimate the age of a "child" during a hearing, is a regular occurrence at the Somali embassies. There is an internal IND work instruction: "leeftijdschatting in Somalische MVV nareiszaken" (age estimation for Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) in cases of travel in connection with family reunification from Somali") that is still used in Yemen, Addis and Nairobi. This and work instruction 2006/28, describes the working method of estimating the age of a person during a hearing. The hearing official can request the estimate "If there is doubt to the age that has been provided and the person cannot prove his/her age with documents or has no other plausible way to prove his/her age".[73]

The person is informed of the outcome and they are subsequently given the opportunity to respond. If the conclusion is that the child is younger or older, it is placed in the report as follows: "It will be explicitly reported in the hearing report that, and why, the specified age of the alien is not deemed plausible. The single statement that the alien looks older or younger, is hereby insufficient. In addition, it will be reported on the grounds of the perception and the dialogue that takes place between the officials carrying out the estimation." An obviously older or younger age should be estimated "on the grounds of external characteristics *in conjunction with* conflicting and/or vague statements, the behaviour and any other indications to the contrary".[74]

[73] IND internal work instruction: "leeftijdschatting in Somalische MVV nareiszaken" (age estimation for Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) in cases of travel in connection with family reunification from Somali") p.2.
[74] IND internal work instruction: "leeftijdschatting in Somalische MVV nareiszaken" (age estimation for Machtiging Voorlopig Verblijf (MVV) (Temporary Residence Permit) in cases of travel in connection with family reunification from Somali") p.3.

Who was in the room?
Mohamed *(15): A Dutch man, a female Somali interpreter and there were other people who came in and out.*
Do you know why they came in and out of the room?
Mohamed: *Yes, they came to me to ask questions. (..) First they took a photograph of me and asked how old I was. Many of the questions that were asked came from the people who came in and out.*
What sorts of questions?
Mohamed: *They questioned how old I was.*

Common sense

Compared with the theory in the work instruction described above for age estimation, the Ombudsman for Children has found, following interviews with officials, that there are certain differences in practice. Sometimes a colleague will be asked; however, not all the colleagues involved have the required job skills.
Conversations with (hearing) officials on the post say that the age estimation is often based on "*common sense"*. What the "common" in common sense refers to is knowledge of their own Dutch children or experience with hearings involving other Somali children.
There is no court yet known by the IND or Ombudsman for Children that has approved this way of carrying out an age estimation on a diplomatic post. There are a number of cases in which an age estimation took place that are still in the first phase or objection phase, so the judge has not (yet) reached a decision. The review in these stages will certainly be factored into the decision. At the IND, there are no known cases in which the application was rejected simply on the basis of an age estimate alone, whereby it was judged to have been evident that the age was higher or lower. In these cases there was always a combination of factors, including conflicting statements, that led to the actual family connection being considered unlikely. How the mutual weighting of the estimation is compared with, for example, hearings in the decision phase, is unknown.
However, the results of this estimation in which someone estimates whether a child is older or younger than they say, based on nothing more than common sense, can have far-reaching consequences on the rest of the procedure.

In hearing reports from Somali embassies, children react in doubt to their ages as follows:

- *I am 15 years old, I am not older.*
- *My father told me that I am now 9 years old*
- *I know how old I am. I´m getting quite old so take me to my brother.*
- *No problem. People all think differently.*
- *No, I´m only 16 years old.*
- *My grandmother never lies, therefore I am twelve years old.*

Analysis

In the social interaction facilitated by the interview method used by the professional, the professional must make a connection with the child. Knowledge of a number of factors that affect the level of development of a child, is indispensable to a hearing official. The Ombudsman for Children is shocked to find that children feel compelled to guess the answers. Putting a child under pressure when they don't know an answer is not a child-friendly interview technique.
The estimation of an older or younger age is based on common sense. The Ombudsman for Children wonders whether relying on common sense is legal, considering this is a large

difference to the procedure that should be followed in the case of a child who has their age estimated. This has not yet been approved by a court, however, the estimations are carried out regularly. No cases have been rejected due to the outcome of this estimation, but it has a heavy weighing factor.

3.8 Translation

Interpreter

At the embassy, the child will be heard with the help of an interpreter. The interpreter translates what the child says (in his/her own language) into English. The case decision official then translates that into Dutch in the report. In countries where Somali children submit their application, this interpreter is facilitated by the Embassy. There are no sworn interpreters available. The embassies in Nairobi and Addis Ababa have reported that, in the past, there were problems finding good interpreters; but now it seems good interpreters are becoming available, for example, through the United Nations. Every now and then, a child may not speak Somali, but a specific dialect. At that time, a different interpreter is found. Finding good interpreters in dialects other than standard Somali is problematic.

Hearing officials are generally satisfied with the quality of the current interpreters. In the past this was different. One hearing official states that there is only one interpreter still working from all the interpreters who were in the service of the Diplomatic Post two and a half years ago. Now interpreters are used who work(ed) for the UN.
Because it is difficult to find sworn interpreters and translators for Somali embassies, it is expected that the interpreters at least comply with the code of conduct as described in the IND work instruction nr. 2009/13 (AUB) "werken met een tolk (working with an interpreter)"). They translate the IND-hearings. There is evidence that this does not happen sufficiently as described below.

Laid down in this code of conduct[75] is, amongst other things: "that the interpreter must be limited to the translation of what is said by the IND official and the alien during the interview, and that the interpreter should not use his position to influence the proceedings". In spite of this, the interpreter who was to be involved in one case invited a child by phone to the hearing at the Somali Embassy. Often, the (foster) parent or escort is called and the time and date are then passed onto the child. According to the IND, inviting a child for a hearing does not form a part of the interpreter's role.[76] "The interpreter shall not be left alone with the alien, and so must always leave the hearing room if the IND official does" (IND work instruction 2009/13 p.3). This can be read to mean that the interpreter should never be left alone with the child. Nevertheless, what often happens is that when a passport is copied or during an interruption from a colleague because of, for example, an age estimation, the interpreter and the child may be left alone for a "short time", says one hearing official. During translating and/or when copying for example, the declaration of being unmarried, the hearing official may be out of sight.

Children from the same (foster) family at Somali embassies are often heard by different hearing officials using different interpreters. This can occur due to logistical reasons: at the embassy, every effort is made to hear all the children on the same day.

The child's understanding of the interpreter

[75] IND work instruction 2009/13 p.2.
[76] Immigration and Naturalisation Service (2013) correspondence with the Ombudsman for Children

Children often find it strange to be talking via an interpreter, it's new to them. The child will be asked whether they understood the interpreter before and after. Most children answer in the affirmative. However: if a report states that a child makes a statement to have understood the interpreter, this may not be by definition what the child actually means. This is reflected in the objections investigated by the Ombudsman for Children, and is also frequently mentioned during interviews with lawyers and children themselves.

Interpreter problems are extensively identified by children. Most children stated they did not want to say that they were unable to fully or partially understand the interpreter. Some understand the interpreter at the beginning, but after a number of questions, only partially, yet dare not change their position. They say that the reason for this is: respect for adults, respect for strangers, fear that no other interpreter is available, the chance that the interview may be stopped and that it all will take a longer time.
One hearing official knows for sure that children dare to say that, "because they are mouthy" and "it's in their interest". Another hearing official points to the responsibility of the interpreter, who should state themselves if they cannot understand the person being interviewed or how a particular word should be translated.

Rachida (16): *I have the impression that he (the interpreter) sometimes did not understand me. He asked me to repeat what I said a couple of times and sometimes he explicitly asked me: what kind of word is that?*
Were you asked if you had understood the interpreter at the end of the interview?
Rachida: *No, I was told the interview was over and I had to leave.*

Case decision official about the hearing report in which the child had replied to have understood the interpreter: "yes, but I cannot then assume that the child has *not* understood the interpreter". However, account should be taken of the fact that the child will not immediately say if something is not understood or is difficult to understand. One hearing official knows for sure that children dare to say that, "because they are mouthy" and "it's in their interest". Another hearing official points to the responsibility of the interpreter, who should state themselves if they cannot understand the person being interviewed or how a particular word should be translated. Hearing officials therefore say that the child would have said if it did not understand the interpreter.

Omar (17) (Somali embassy)
Q: Do you think the interpreter understood you?
A: No. Sometimes I had an interpreter from the north of Somalia and I did not understand. (..) There are different meanings for, for example, the word roof (list follows). There are three or four dialects for the word roof. I really did not understood him, when he said that.
(..) Q: Were you asked if you had understood the interpreter at the end of the interview?
A: Yes.
Q: What did you say?
A: I was afraid that if I said that I did not understand, it would be repeated again
Q: Was this asked in the presence of the interpreter himself?
A: Yes. He needed to translate that question as well.
(..) A: There are many things incorrectly translated by the interpreter, which we later saw in the report.

The interpreter sometimes used different words than you're familiar with?
***Adnan** (18): Yes he used them. Sometimes yes. Do you remember one of the words? Well, for example, toilet, the word she used for toilet was already different, and whether it was a standing toilet or a sitting toilet and then I did not understand it. Then I asked, and she explained it. (..) It was about the toilet, and then there was a question about the fence, the wall of the toilet. Whether it was sitting together or separately. I did not understand, and then I asked the question.*

In one of the thirty case files involved in the qualitative investigation, after a successful objection was made against the hearing it was found that the interpreter had a different nationality and spoke a different language to the child. "The question was never asked whether the interpreter had been understood or whether the questions had been understood. The person concerned never had the chance to verify that the answers had been interpreted correctly." Hereafter there will be a letter providing the opportunity for the hearing to be held in the correct language. The second hearing is held eleven months later at the same embassy. (60)

Analysis
Children describe various problems with the interpreter. They use all sorts of reasons why they rarely tell the hearing official that they do not understand the interpreter, while the level of understanding has often been stated by them as a problem. Not all interpreters follow the IND code of conduct. The Ombudsman for Children has noticed that children´s statements are not translated carefully enough.

3.9 Reporting

A hearing report occurs when a hearing official directly types the answers below each question or heading during the hearing. Within the same family it is possible that two different reports are written after using different interpreters, or for one child, there is an additional theme to be asked about. The report contains pre-printed statements and unwritten, and, therefore, non-leading questions. Moreover, there were signs of translation errors spotted in the hearing observations. In earlier reports, it is unclear who spoke and when. This is shown below with some examples.

Several pre-printed statements from the Somali hearing format will be included in the report, such as: *´I have never lived in ... at a different address other than that which was previously*

stated by me, not even for one night.´ According to one hearing official, this comes from the old format, within which the travel story was requested. In this format, it is no longer relevant. However, in the questionnaire for other embassies, questions about the travel story will still be asked and a pre-printed statement will not be used. One case decision official finds that the decision "should be about the intent of what the person concerned says, otherwise it should be removed." In that case, the intent may serve as a paraphrase, not as a statement of the child.

In addition, the introduction of single "headings" in the Somali format (as a substitute for written questions) reduced the readability of the report and made it difficult to follow the hearing literally. Rarely were the questions and sub-questions listed in the report, or they were processed in the answers. Also, the analysed hearing reports show that between 2008 and 2012, there was varying quality in the representation of the hearing on paper: an exact representation of the interview was lacking, they consisted of a simple list of questions and answers. In several interviews, no clear distinction was made between the child or the hearing official in the report.

Finally, the hearing official drew the report up in Dutch. Hearing officials say they have little or no trouble translating the spoken English into Dutch for the report. The use the argument that they move in an international environment where English is spoken constantly. In the observations, the phrases "I do not know" and "I do not remember" were interchangeable in the translation. Apart from this incorrect translation, answers to questions were also reported as such in the report. This means that a child's sentences that are being used to make a decision may not have actually been said. And the case decision official may be given the wrong impression.

Case decision officials assume that the report accurately reflects the questions and answers from the hearing. An exact reproduction cannot however - as seen above - be guaranteed, yet the details of these hearings carry the burden of proof.

Inspection report

The hearing report will be sent for the first decision on applications from Somali minors. This is the first time that the parent, and probably the children, can see the report itself. The child is only given access to the report (Somali embassies) if the sponsor decides to let them see it. If a decision is taken to make an objection to a negative decision, the children are provided with an opportunity to further explain themselves.

Did you see the report from the hearing?
Samira (16): *Today for the first time. You had better check it for errors. Maybe you were too nervous and made mistakes by accident. Nobody's perfect.*

Children state to have never seen the hearing report, even after the decision has been made. There is a possibility to look at the report earlier: at the request of the person concerned, the report can be read back and translated in the presence of that person. Children do not use this right because they are not aware of it, says one hearing official. This is an essential part of the feedback. The question is, who is designated to inform them, who ensures that the child is informed?
Or the child is asked if he/she would like to inspect the report, says one hearing official: **"**No that not. The interview has already lasted two hours. It is not out of practical reasons. If someone asks, then it is allowed. I do not offer it. If you ask at the end, do you want to add some more or

make a correction, and someone says they do not, then there is no reason to go through the whole report." Afterwards, the children are relieved that it is over and they are fearful of giving "wrong" answers.

Sarah (9) about here expectations after the hearing: *My expectation was changed, so that I would get a rejection.*
Why did you think that?
Sarah: *I was little, I did not have any good answers. I was little.*

Rachida (16): *we find that it took a long time before everything was finished. We had just seen that others had suddenly received a positive recommendation. Also: the wait was long. We did not like to be there and it was not our country either.*

Your mother said your expectations have changed in the years that you have been here, is that right?
Aisha (16): *Yes, when I came I had high hopes, because I would go to the Netherlands, to school, and maybe even find a job. After that I lost everything, I do not go to school, I have no hope to ever go to school. I'm just by myself at home.*

We are engaged in writing a book, what is the most important thing to put in the book according to you?
Zarayda (14): *I would suggest you put in that book that children in Addis have nowhere to go, that they cannot go to school, and there is nothing fun to do. They do not have a better future if they stay here in Addis.*

Analysis
The Ombudsman for Children has found that translated statements of children are incorrectly and carelessly recorded in the hearing report. These inaccuracies undermine the reliability of the statements. Hearing officials are not officially qualified to translate English into Dutch for the hearing report. Moreover, statements in the report may not have actually been said, or said in that way, by the child. These statements cannot be corrected by the child.

3.10 Conclusions

There are clear guidelines for the requirements that a hearing with a child must comply with, and these are stipulated in General Comment 12 of the UNCRC. The Ombudsman for Children has noticed that the current manner in which hearings with minors are held do not meet the requirements of the Convention on the Rights of the Child for proceedings in which children are heard. This also applies to the hearings held between 2008 and 2012 at the diplomatic posts abroad.

1. **The Ombudsman for Children has noticed that the IND does not have an age limit for the hearing of children.** Dutch experts recommend as a standard, children under 12 years of age should not be heard. However, between 2008 and 2012, hearings were regularly held with both biological and foster children between 6 and 12 years of age. There are still hearings being held with children under 12 years of age. The Ombudsman for Children deems hearings at such a young age to not be in the best interests of the child.

2. **The Ombudsman for Children has found that there is not enough comprehensive and transparent information about the procedure, as well as a lack of clear instructions about the child's rights during the hearing.** The children who are heard tell the Ombudsman for Children that they were not, or were insufficiently, informed and instructed about the contents of the hearing, the role their statement plays in their procedure, and the weight attached to it. There is a lack of (rights) assistance during the hearing. The child therefore develops his/her own expectation for the future. The hearing has the status of an "adversarial process": the statements of the child are compared to the hearings of the person in the Netherlands. Moreover, the child does not receive any feedback from the Embassy or the IND.

3. **The Ombudsman for Children has found, for children expected at a hearing at the embassy, that they are required to provide answers to many questions at a fast place and over a long period of time.** On average, between 2008 and 2012, hearings lasted 93 minutes and an average of 163 questions were asked. In this time, they were asked to make statements relating to events that occurred on average, longer than 22 months previously. Children consider the hearing to be too long, to contain too many questions, and to be conducted at too high a pace in order to be able to properly reflect and give good answers. Children say that they suffer from the pressure they experienced when answering the questions and their fear before and during the hearing, as well as at the end about the consequences of their answers.

4. **The Ombudsman for Children notes that a considerable number of questions do not appear to be sufficiently aligned to the children's age and development.** The questions for children are not presented in a child-friendly way. Children give examples of "weird", "vague", "irrelevant" and "exhausting" questions. The hearing reports from between 2008 and 2012 contain questions that are related to a theme that is not appropriate for the children's age and that are literally written out and formulated in an extremely abstract way.

5. **The Ombudsman for Children deems it undesirable that the IND uses two hearing formats for different diplomatic posts, namely: the embassies where Somali children submit their applications and other embassies.** With two formats the hearing runs inconclusively for all children. In fact, the hearing formats are guidelines for the design and conduct of the hearing and moreover, also form the basis for the reporting.

6. The Ombudsman for Children has noticed that several officials involved in the procedure, employed by the IND and the investigated diplomatic posts, are not adequately trained to carry out their task in a careful manner in accordance with the UNCRC. They carry out both the investigation of the family connection, as well as the evaluation of statements made by children. The interviewed hearing officials are given different training and there are major differences in their experience of conducting hearings with children, from very limited experience to many years. The observed hearing officials had a predominantly case-oriented attitude toward the child when they were observed, while experts advocate using an attitude that is midway between case-oriented and child-oriented. For certain themes, the phrasing of questions does not take sufficient account of the shocking events that may have taken place in the immediate environment of the child.

7. **The Ombudsman for Children deems the approach of the hearing official towards the child to not always be sufficiently objective.** Hearing officials send and sent in their questions and expressed disbelief regarding the statements of children. Hearing officials send their recommendations back to the decision makers.

8. **The Ombudsman for Children has found that translated statements of children are incorrectly and carelessly recorded in the hearing report.** Children describe various problems with the interpreter. They use all sorts of reasons why they rarely tell the hearing official that they do not understand the interpreter, while the level of understanding has often been stated by them as a problem. Not all interpreters follow the IND code of conduct. Moreover, hearing officials are not formerly qualified to translate English into Dutch for the hearing report. In the hearing reports, not all questions that were/are asked were/are written down legibly. There are statements in the report may not have actually been said, or expressed in that way, by the child. The hearing report is not fed back to the child and the child is not given the opportunity to correct any mistakes. Therefore, the child gets no information about the possible waiting time and is not informed, neither before nor after the decision making process, about how his statements were used.

3.11 Recommendations with respect to children's hearings

1. Keep the age and maturity of the child in mind throughout the process. The interests of the child must be the primary consideration in both the form and the content of the procedure. Therefore, make all parts of the hearing format understandable at a child's level and ask what the child wants in the future, so these interests can be explicitly taken into account.
   a. Limit the age limit for children's hearings to 12 years of age.
   b. Ensure that the protocol for age estimation is followed at all embassies, and that employees are trained in its correct implementation.

2. Before, during and after the hearing, make sufficient, clear and transparent information available to the child: about the hearing, as well as the role of the hearing within the process.
   a. Provide a child with sufficient information and the correct instructions, which includes information about who the statements will be shared with.
   b. Organise an appropriate escort for the child and inform children that they may bring their own escort to the interview.

3. Establish a hearing that feels like a conversation at all embassies:
   a. in a child-friendly space;
   b. with fixed breaks;
   c. with a maximum duration.
   d. take into account children who have experienced traumatic events when formulating the questions and in the approach to the child. Where possible, avoid questions that can be painful for the child.

4. Adjust the tempo and number of questions to fit the developmental level of the child and make use of child-friendly themes and language. Make sure that the level of detail of the events that are going to be asked about depend on how long ago they occurred.

5. Give the embassy and the IND the task of carrying out intensive observation and control of the quality of (recruiting of) hearing officials and to also ensure properly qualified (according to the code of conduct) interpreters are employed.

6. Ensure only experienced hearing officials are employed and furthermore, have training and further training in the use of child-friendly hearing techniques.

   a. Organise a regular peer consultation between hearing officials from different embassies
   b. Organise regular meetings between hearing officials and case decision officials about the quality and relevance of the questions.

7. Compile the report carefully and record the estimates and thoughts of children as required.

   a. Add to the standard questions, the desired translation of those certain Dutch terms that are often translated incorrectly or differently by interpreters.

8. Organise direct feedback of the statement to the child after the hearing interview has taken place. Give the child the opportunity and time to make corrections and additions. Inform the child about this possibility at the start.

9. Make an audio recording of the hearing, as well as any corrections and additions the child makes, unless the parent or the child indicates that they do not want this to happen; make the audio file available to the child, the parent and, if appropriate, his authorised representative.

4. DECISIONS

The Ombudsman for Children has investigated how the children's hearing reports are evaluated by carrying out a thorough case file investigation and conducting interviews with IND case decision officials.

Questions asked included:
- On what grounds are the children's applications assigned/rejected in practice?
- How does a case decision official evaluate whether an actual family connection is plausible?
- How does the case decision official evaluate the hearing reports, what information/knowledge/guidance does he have at his disposal?
- On the basis of what contradictions in the statements will applications be rejected?
- How will consistency be monitored in the decisions of the different case decision officials?
- To what extent is the fact that the applications have been submitted by minors taken into account?

4.1 Working method in the decision phase

When evaluating a file, the case decision official must consider whether all legal and policy requirements have been met and whether the child is eligible for travel in connection with family reunification. The laws and regulations, together with the IND work instructions, form the review framework for the case decision official. The work instructions include developments, trends, and case law that the case decision official must take into consideration when evaluating the applications.

One of the main questions that the case decision official must evaluate is whether there was an actual family connection between the parent in the Netherlands and the child at the time that the parent fled from the country of origin. After the policy was tightened in 2009, the hearing reports from the children and the parent in Netherlands were the main source of information. The statements by the family members about such things as the living environment, the family situation and each other, will be compared by the case decision official with that made by the parent with the child, and that of the children themselves. The case decision official looks at the file in its entirety and must evaluate whether the statements made by the family members are sufficiently consistent and whether or not there are "too many" contradictions concerning "essential" parts of the statements by the family members. What "too many" contradictions are, how to evaluate the plausibility of the family connection, and the definition of what parts of the statements are "essential", are not fixed and will be evaluated by the case decision official on a individual basis.

The review framework is formed by the law and regulations and this is further elaborated in the work instructions. Room for interpretation is left for the case decision official when evaluating whether the conditions have been met.
In evaluating the application, the IND case decision official does not have an assessment guide. Each employee uses a different system in their evaluation. One will make themselves a schematic overview of the "for" and "against" arguments (the contradictions and consistencies) and compare them, the other uses a less systematic system and evaluates the file "as a whole". The interviewed case decision officials state they can ask each other for advice or the thoughts of another while evaluating a case file. They can also make use of an intranet to look up specific country information. Furthermore, they say they make use of their work experience, common

sense and their own frame of reference in order to evaluate whether an actual family connection has been made plausible during the hearings.

There is a distinction between officials with and officials without authority. One case file will be processed and signed by a senior official with authority or processed by a trainee who is undergoing training and then signed by a senior official. In the first case the file is thus seen by one person, in the latter case, two.

4.2 Acceptance and rejection percentages

Table 8: Evaluation of application for a recommendation (2008 – 2012)

	Positive	Negative	Total
Biological children	462 (42.7%)	621 (57.3%)	1083
Foster children	35 (7.1%)	459 (92.9%)	494
Stepchildren	8 (11.8%)	60 (88.2%)	68
Total	505	1140	**1645**

Source: Sample investigation carried out by the Ombudsman for Children (2012)

Table 9: Decision in primo on an application to travel in connection with family reunification (2008 – 2012)

	Initial application rejected	Rejection rate of total decisions in primo	Initial application accepted	Percentage acceptance rate of total decisions in primo	After recommendation application. No travel in connection with family reunification application submitted	Total
Biological children	223	29.3%	539	70.7%	304 (28.5%)	1066
Foster-children	191	79.3%	50	20.7%	254 (51.3%)	495
Step-children	26	78.8%	7	21.2%	35 (51.5%)	68
Total	**440**		**596**		**593**	**1629**

Source: Sample investigation carried out by the Ombudsman for Children (2012)

Table 10: Number of acceptances and rejections for top 3 most common nationalities of children who submitted a application to travel in connection with family reunification

Nationality	Rejections	Acceptances	Total
Somali	405	410	815
Iraqi	5	137	142
Eritrean	4	9	13

Source: sample investigation carried out by the Ombudsman for Children (2012)

Table 11: Number of accepted applications to travel in connection with family reunification from children 2008-2012[77]

2008	Total number of decisions in primo	Of which accepted in primo	Of which accepted through objection or appeal	Percentage Acceptances
Biological children	98	94	0	95.9 %
Foster children	15	12	0	80 %
Stepchildren	8	5	0	62.5 %

2009	Total number of decisions in primo	Of which accepted in primo	Of which accepted through objection or appeal	Percentage Acceptances
Biological children	151	140	3	94.7 %
Foster children	24	12	3	62.5 %
Stepchildren	0	0	0	0 %

2010	Total number of decisions in primo	Of which accepted in primo	Of which accepted through objection or appeal	Percentage Acceptances
Biological children	250	181	7	75.2 %
Foster children	61	9	7	26.2 %

[77] Based on the year in which Decision in Primo is taken.

Stepchildren	12	1	2	30.5 %

2011	**Total number of decisions in primo**	**Of which accepted in primo**	**Of which accepted through objection or appeal**	**Percentage Acceptances**
Biological children	137	44	13	41.6 %
Foster children	76	2	1	3.9 %
Stepchildren	9	1	0	11.1 %

2012 (until mid August)	**Total number of decisions in primo**	**Of which accepted in primo**	**Of which accepted through objection or appeal**	**Percentage Acceptances**
Biological children	95	43	0	45.3 %
Foster children	39	1	0	2.6 %
Stepchildren	2	0	0	0 %

Source: sample investigation carried out by the Ombudsman for Children (2012)

An analysis of the acceptance and rejection rate for the applications of children between 2008 and 2012 shows:

- A large number of recommendation applications have been evaluated as negative (also in the period that no investigation during the recommendation phase was carried out). Especially among foster and stepchildren, the number of negative recommendations that were issued was high.
- Relatively, many of the children that do not submit an application for a recommendation, do not then submit an application for travel in connection with family reunification. In the case of foster and stepchildren, this is about half.
- The children who have submitted an application for travel in connection with family reunification and have received a decision are often rejected in the first instance, namely for biological children, nearly 30%, and for foster and stepchildren, almost 80%.
- The percentage allocations increases quickly after 2008. This applies to both biological children, as well as foster and stepchildren.

4.3 Grounds for rejection

In recent years, the Ombudsman for Children has investigated the most important grounds upon which the IND rejected applications from children. In many case files, there are multiple reasons for a rejection and the decisive reason is not made clear.

Actual family connection is unlikely to have been made
From the quantitative case file analysis carried out by the Ombudsman for Children, it can be seen that the vast majority of applications from children are rejected because an actual family connection with the person in Netherlands was deemed implausible at the time of his departure from the country of origin. In these cases, the IND deems it unlikely that the child and the person actually in Netherlands were part of a family in the country of origin, regardless of whether or not there is an organic band.

In these cases, the IND have judged there to be too many contradictions in the statements made by the children themselves or when compared to the person in Netherlands. It is also possible that some applications of children are rejected because there are too many contradictions in the statements by the parents themselves. It can, for example, be a case where the children were too young to be heard and the spouse of the person in Netherlands is questioned about the family connection.

If a child's application for family reunification is rejected, this occurs in the vast majority of cases because the child and the parent are unlikely to have been able to prove during the hearings that they had a family connection at the time the parent had to flee.

The case file investigation carried out by the Ombudsman for Children reveals that some case files contain a large number of contradictions in the statements made by the children themselves or with the parent. In many other case files in which the application has been rejected, the number and nature of the contradictions significantly less. Also, if some of the contradictions can be cleared up following an objection and only a few remain, the application result may still be negative. The number of contradictions the statements "may", contain before it can be concluded that an actual connection can be plausible cannot be specified by the IND, because it is not defined in policy. In one case, this may be more than in another. For each individual case, there is a complete trade-off, with the statements from the members of the family being viewed and evaluated as a whole.

The family connection is not established in the country of origin
In the sample, there are few case files in which a request by a child is rejected because the family relationship is not doubted but, instead, because it cannot be proven that the family connection was established in the country of origin. This may be because it had been previously concluded that no actual connection existed and so the moment it was established is no longer relevant to the investigation. In the sample, at least five children were given a negative recommendation because the family was not established in the country of origin, but outside the borders. For example, parents who find themselves in a refugee camp after their flight, live there for a number of years and have children there.

The child has been (permanently) taken in by another family

Another common ground for rejection is the finding that the child has now been permanently taken in by another family, which means that the family connection can now be considered as broken. In the case of foster children, the condition that this taking in should be "permanent" and fully "taken in" by another family does not count. These grounds are also not explicitly stated in the decision, which means it is difficult to get a picture of how often rejections on these grounds occur. A broken family connection leads to the conclusion "actual family connection is implausible". The question of whether a family connection is plausible is easier than the question: whether, and for how long, has the family connection been broken. It is mainly applications from foster children that are rejected on these grounds. Again, the IND is ambiguous about what may be defined under "(permanently) taken in by another family" and this is generally left to the discretion of the individual case decision official. According to the interviews with the case decision officials, how they then define this varies widely. There is no directive that states, for example, how long a child must have lived with another family in order to be able to talk of having been "permanently" taken in. Where one employee states that this can be permanent after a couple of weeks, another believes there should be more time before considering it to be permanent. There is also no room to evaluate whether, in the future, the child will be taken in by the family where it currently resides. For example, when a child is left behind with a grandmother who, in the meantime, has become ill and states that she can no longer care for the child or take the child in, it is nevertheless concluded that the child has been taken in by another family permanently and, for that reason, the application request is rejected.

Missing declaration of consent

More grounds for rejection are the lack of a declaration of consent from the parent left behind, in which they agree to the departure of the child to the parent in the Netherlands. Although relatively few cases are rejected on these grounds, it can in practice cause many problems for the child. Indeed, it is in some cases simply not possible to produce a declaration of consent, for example, if the parent has died or has disappeared. A missing declaration of consent in these cases does not necessarily mean that an application will be rejected immediately. At that time, it is the task of the person in the Netherlands, and possibly the child, to prove that the other parent has died or that unsuccessful attempts have been made to find the missing parent in order to sign the declaration.

The way in which the case decision officials deal with these cases is very different. The difference is, in particular, in the evaluation that is made about whether sufficient effort has been made by the child and the person in the Netherlands to provide evidence of the death or disappearance of the parent who would have to sign the declaration of consent. Where one official requires a very detailed account from the parent in Netherlands, with details of the actions that have been carried out, another official will take the turbulent conditions in the country of origin into account and will not expect too much from the sponsor. Some officials state that, for example, contact can be made with the Red Cross to verify whether the parent has reported into a refugee camp.

4.4 Signs of shortcomings in the decision phase

Based on the case file investigation, the Ombudsman for Children has found a number of serious shortcomings in the way the IND made decisions in the cases of travel in connection with family reunification for minors. Many decisions remained unclear, even after the case files were studied, because there is little in the files to describe how the IND reached the decision.

There were large differences in the way decisions about the applications were made and the provision of any substantiation for the decision. The ambiguities have been explained in the interviews with the case decision officials. On the basis of the case file investigation and the interviews, the Ombudsman for Children makes the following analysis:

1. Insufficient guidance results in a lack of sufficient consistency

The Ombudsman for Children is of the opinion that the IND case decision officials who make decisions in cases of travel in connection with family reunification are not given sufficient guidance to be able to carefully consider each case. Although they all have the same legal and policy review framework and they all make use of work instructions, the case decision official still has too much room for interpretation. How these should be completed and how certain definitions should be interpreted in the law or policy remains unclear. There are few guidelines to support a case decision official in deciding whether a family connection is plausible or not. This results in the individual official being given a large amount of freedom to make a decision, which means there is little consistency in the way the applications are evaluated. The officials themselves talk about common sense when evaluating what children may be expected to explain about the family connection. This ´common sense´ about what children may be asked has developed differently in each official. After all, one employee may, perhaps, have children that can serve as a reference, the other s not. At present, too little has been done to ensure sufficient consistency in the evaluation of the applications. From the child´s point of view, there is too much at stake for the decision to depend on which official evaluates your application, especially if this may be the difference between whether or not to you come to the Netherlands.

2. Focus on contradictions in statements

During the evaluation of the hearing reports, the focus is very much on the points in the statements that contain contradictions. There is a tendency for the case decision official to be too focused on finding signs of an improper appeal for travel in connection with family reunification. In the disposition, in which the decision will be supported, a summary is provided of the points made in the child´s statement that agree with those of their brothers and/or sisters and the parent. It seems that the agreeing points are left out. That worries the Ombudsman for Children, because the presence of contradictions in the statements does not automatically lead to the conclusion that there could be no question of a family connection.

How the contradictions and consistencies are weighed against one another and why, for example, an actual connection is considered unlikely, despite agreements on many topics, is not currently transparently substantiated in the IND´s decision. Therefore, there is no insight into the considerations available: not for the child, the parent, the lawyer or the court. The Ombudsman for Children therefore believes that the IND seriously falls short in providing the reasons for its decisions.

Case Study 1

A Somali refugee asks for family reunification with his wife and her two children and two younger brothers. Since their father was murdered and their mother is no longer alive, he has taken care of his younger brothers. The woman and the children are heard at the embassy in Addis Ababa. They are asked many questions about the journey from Somalia to Ethiopia - that is, after the flight of their husband/foster father - for example, the colours of the cars in which they were transported and who sat where in the truck.

The relevance of this when determining the family connection between husband/foster father and the rest of the family is unclear. Questions about the room layout in the home, the place where they live, go to school and the father's work are mostly answered consistently. Yet they were rejected due to differences in details. For example, the water supply, for which there was an inexplicable discrepancy despite some follow-up questions. The mother says that water vendors came with donkeys to the door. One of the boys says that the water must be retrieved at the source. What is apparent, however, is that the water sellers also go to the source with their donkeys. If a water seller does not visit the home, one of the boys would have to go to the source, where the vendors go with their donkeys, to fetch water.

3. A small number of contradictions relating to details, can lead to rejection

The qualitative case file analysis that the Ombudsman for Children carried out has shown that an application can even be rejected if there are a small number of contradictions in the statements. The Ombudsman for Children finds this to be very curious. After all, the child is asked so many questions that contradictions are likely in the statements. That does not always mean that the family members have not formed a family at the time of departure of the parent. The bar is set too high for the children, too much is expected from their statements and, in addition, there is not one line in the case files about how many contradictions will be tolerated by the IND. In some case files where an application has been rejected, there are many contradictions in the statements, but there are others that are the complete opposite: rejection has been based on single contradictions on a small detail.

Case Study 2

The family reunification application concerns a Congolese couple. In 1998, she lost many relatives in the civil war. Afterwards, they fled to another region with their two children and a few remaining family members. In 2006, they were attacked by rebels. The woman's sister and her spouse were killed. The couple took care of their two children, a boy and a girl. The woman's brother and his spouse were also killed. The child that was left alone after the carnage was also taken in, in addition to the six children they now had themselves.

In 2010, the woman was raped in front of her husband. He was taken by the rebels and he was able to flee. The rebels returned and raped her again, as well as her foster daughter (the daughter of her sister), who was at the time, 14 years old. The two youngest children were also abused. She flees with the children to Uganda. They now live in Kampala. The wife is pregnant because of the rape and is also injured. She miscarriages with serious complications. Her children are also in bad shape, especially her fourteen-year-old foster daughter who is traumatised by the rape and the earlier loss of her parents. Due to the poor health conditions of the woman and her children, VluchtelingenWerk Nederland (the Dutch Council for Refugees) asks IND Policy whether the matter can be dealt with expeditiously. To this end, IND Policy asks the Documentation Office for the relevant documents to be submitted expeditiously. However, the documents are not sufficiently evaluated for a decision to be made. Then it is decided to hold identification hearings with the oldest children. A DNA test is offered for the biological children.

The hearings are held at the Dutch embassy in Kampala with the woman and the two oldest biological children (13 and 15) and the two oldest foster children (13 and 14). The embassy official and an interpreter carried out interviews with the persons concerned between 0915 and 1645; in this time they took only one 5 minute break and one 30 minute break. The persons concerned were not given an opportunity to read the interview with the interpreter in order to

make any corrections and make additions to the report. The foster daughter begins crying during the hearing when asked how long she has been living with her aunt (and thus when both her parents were killed). She was simply asked, "are you ok?"; after which, the hearing was resumed. She also starts to cry when asked about her rape, but the hearing continued immediately. When her brother is asked during his hearing, "how do you know what happened to your parents?", it is stated: "person concerned clams up and lies across the table." This was also met with. "are you ok?", and the interview continued. The children are not heard in the presence of their foster mother. If it is obvious that it is becoming too much for the children because they lost their parents in such a terrible way, they are not offered a break or an opportunity to go to their foster mother for support.

The applications of all family members are rejected because, among other things, statements differed about who was sleeping in what room and whether food was cooked inside or outside. Also, according to the IND, there were contradictions about whether the neighbours were friends or not. This is something that is quite difficult for children to evaluate. Little value was attached to the parts of the statements that did match (who lived in the house and since when, where they lived, where they got their water from and the fact that they had a radio). No account was made for the fact that the period the children were being asked about had occurred more than a year ago, and that the children had experienced traumatic events.

After an objection (during which some inconsistencies are further explained by the lawyer and the parent) only a few contradictions remain, yet the objection is still rejected. In one decision in the first instance, the contradictory statements that had been taken into account were summed up during the disposition and weighed up in the evaluation to mean that a family connection was implausible. It usually takes approximately between six and ten contradictions. This should be compared with the amount of questions the child was asked; in the majority of cases, this is between 150 and 200 questions.

The Ombudsman for Children has also frequently seen that these contradictions concern very detailed information, for example, about everyday family life, home, school, and personal information of the parents. A number of examples have been taken directly from the case files investigated by the Ombudsman for Children:

Examples of contradictory statements affecting the child in a negative decision:
cooking inside or outside the house, while others state food was cooked inside the house
the profession of the sponsor (parent in the Netherlands)
how often the father was home.
the number of nights they slept at location x during their flight
where people slept in the house in town/village x
the number of children sitting in the classroom and how many lessons per day
which family members fetched water.
the material from which the toilet was made
the number of beds in the house
the colour of the mat upon which the parents slept
whether or not there was a picture in room x
the cause of death of the father (according to the foster children, by shrapnel, and according to the person in the Netherlands, by a stray bullet)
the colour of the father's van
how long the mother stayed in hospital
or whether the mother went to the hospital after a mortar attack
how long the child attended Koranic school
who came home for lunch
the journey time from Somalia to Addis Ababa
exactly who slept where in the house in the country of origin
the walking distance to school
who in the family listened to the radio

One problem with some of these contradictions held against the child by the IND, as evidenced by the decisions, is that it was overlooked that certain questions could have multiple answers. As in the example on the inside or outside cooking, both answers may be "correct". Perhaps food was cooked outside at the beginning of the day and a little later inside, or it may have differed with the seasons or the days of the week. It is not strange that two children give a different answer. The same applied to the question about whether the father came home for lunch. Upon a question about the father's profession, children may respond differently, yet both give the right answer.

The Ombudsman for Children finds it striking that even though children must answer a very large number of questions, only a small number of contradictory answers may lead to rejection. The question is whether a Dutch family, which is not in such a vulnerable position, would be able to consistently answer so many questions. When there is just a small number of contradictions, it seems that there is no longer a requirement for the family connection to be "plausible" but "fully proven".

4. Deciding the trustworthiness of children's statements

The case decision official must make a decision based on the written report from the hearing with the child at the embassy and that of the parent in the Netherlands. There is currently no room to assess the circumstances under which the statements of the child came about and whether there are factors which may have an impact on its reliability. This is different when children in the Netherlands make statements to such people as the police - either as witnesses or perpetrators. In these cases, it is possible to ask an expert to evaluate the reliability of the statements. This expert can, in this case, view the video recording made during the child's

hearing. In the proceedings followed by children when they are heard by the IND, this possibility does not exist and there is no room to doubt the reliability of the statements. The child has, so to speak, one chance to demonstrate that he was part of the family of the person in the Netherlands. If the best use of this opportunity is not made, recovery is not possible. What is stated during the hearing at the embassy will be used throughout the procedure and this will form the basis for the decision.
After the hearing, the child is given the opportunity to make adjustments and changes to his statements. The hearing officials interviewed state that this rarely occurs. Later, in the objection proceedings, the child and the representative get an opportunity to clarify contradictions and any other factors that may affect the statements ("the child was very tired," or "the child had a blackout"). As far as the case decision officials are concerned, it is no longer possible for these factors to be weighed up and therefore, they can no longer play a role in the decision.

The Ombudsman for Children finds that, on the basis of statements made during the hearing, the IND decides too quickly that there is no actual family connection and the child's application to reunite with a parent in the Netherlands is rejected. These contradictions, however, may be the result of various limitations during the hearing. The IND takes little account of this now. For example, not all children make use of an interpreter during a hearing, there may be errors in the (double) translation, the child may have to guess answers because it is simply too long ago, or the child may not have understood the questions very well. In the previous chapter, quite a number of shortcomings in using the identification hearing as an investigative medium were discussed. These factors may affect the reliability of the children's statements and can be decisive in the decision phase.

The Ombudsman for Children finds that, when the decision is made, more account should be taken of the possibility of errors in the translation by the interpreter or by the hearing official that may affect the reliability of the child's statement. The IND should, in its working method, give more recognition to the fact that contradictions may be the result of errors in the translation. There is always a chance that mistakes will be made when working with interpreters, however good they may be. In this context, the chance is perhaps even greater. When the child brings their own interpreter, there will be a question about the quality of the translation and whether the child is wholly dependent on that person.

The Ombudsman for Children also finds that, during the decision making process, account must be taken of the fact that the child is often asked about events that may have occurred to him/her several years previously. In this case, the hearing official should adapt the questions, because it is no longer realistic to expect the child to make a statement about the smallest details. For example, if the child has not seen their parent for several months, this situation is very different. Consideration should therefore be given in each case for what can be expected from the child and the hearing must be adjusted to take this onto account. In making a decision, the IND should exercise a lot of caution while considering contradictions if they relate to events that have occurred a long time ago.

The above means that the IND no longer needs to reject a heard application if there are just a few contradictions in the statements. The risk is too great that these contradictions are the result of factors that affect the reliability of the statements.

5. Excessive, unsubstantiated, expectations of a child giving a statement

The Ombudsman for Children is of the opinion that the IND has been expecting too much from children's statements in recent years. Too little thought is put into the question of what can be reasonably expected of a child when explaining his family life and the personal life of his parents. The IND takes too little account of the age of the child, the cultural background of the child and the possible traumatic experiences that may affect the reliability of the statements made by the child.

It has been found in decisions made by the IND that the IND has certain expectations of the children and what they, given their age, should be able to explain about the family connection. However, these expectations are unfounded; The IND cannot substantiate what their expectations of children are based on. Also, the decisions do not show that the IND expects less from younger children when compared to older children. The Ombudsman for Children concludes that too much is expected of a child, considering what may be appropriate for the age.

Examples of unreasonable expectations are reflected in the decisions that the child objected to:

- The child does not know what happened to her biological mother, who disappeared after the death of her father
- The child (13 years) does not know the third name of his grandmother
- The child (13 years) do not know the name of the district in Mogadishu he lived.
- Child does not know the addresses he has lived at since his departure from Somalia
- Child (15 years) does not know his neighbours in Mogadishu

In the evaluation of the statements made by the children and the parent(s), the cultural context and the relationships between children and their parents are not take into account sufficiently. It is too easy to assume that children in Somalia will know as much about the personal lives of their parents as Dutch children do. However, in other cultures, not so much information is shared with children when compared to the Netherlands. . Additionally, it is possible that the child may have an information disadvantage when compared to the parent because previously, the parent had chosen not to share the information. This may have been the case in the case file where the IND objected to the following:

"The boy says that the foster brother is missing; sponsor says he died"

It is expected that children can provide information about their parents, with the only real question being whether this information has been shared with them in the first place. For example, the children are expected to know exactly what the parent did for work. Other examples of this are:

- Whether the parents went to the mosque
- The number of siblings in the parents' families
- The place and date of the parents' wedding
- Whether the parent had been married to someone else previously
- Where parents had previously lived
- Parents' tribal origins
- Precisely when family members such as aunts and uncles had died

It is also notable that many questions were asked that dealt with chronology in time, dates and ages and that in the decision of the IND, contradictions about these subjects cost the children

dearly. However, time does not play such an important role in some cultures as it does in the Netherlands and children are not always aware of it anyway. Examples of decisions that have been investigated are:

"I assume you know your parent's dates of birth, as well as those of your brothers and sisters" (In a case with Somali children)

"It is surprising that the child knows that her foster father is older than her biological father, but she does not know how old her biological father is."

"I fail to see how the persons concerned do not or cannot directly recall their current age."

In addition, the Ombudsman for Children sees in other objections that children cannot answer questions such as:

- Whether the mother's girlfriend was married.
- When the father came to Ethiopia to join the family.
- How many Ramadans the child had fasted without his mother.
- Questions about children from a previous marriage of a parent and who are not part of the application
- During which period (between which month and year until which month and year) the parent worked.

High expectations are placed on what it is that children can explain about the traumatic events that have occurred during their lives. In particular, expectations that the Ombudsman for Children found in decisions regarding the child's statements about the flight to refuge are not realistic. This is often a very traumatic experience for children and they should not be expected to answer many questions about these events. In fact, the Ombudsman for Children found the following passages:

"A child of fourteen years may be expected to know whether the family travelled into the country by car or by bus."

"It is surprising that A. needed three minutes to think about the name of his uncle, considering his death was the precise reason for the flight"

Other examples showing that not being able to provide a detailed answer to a detailed question about (potentially) traumatic events in their lives will be used against the child in the IND's decision:

- The child says relatives went missing after the departure of the mother, others say it was the same day.
- The child says that the parents were killed by a bomb, the sponsor in the Netherlands (foster parent) says it was due to shelling. (child, 15 years old)
- Since when has the sister of the child (15 years old) been missing.
- When people were last seen
- Time and cause of death of grandfather
- Who was present at the father's funeral
- How the child found out that the father had died
- Which parent had died earlier, the father or the mother

Another striking example:

In a matter of two girls aged 15 and 16 years, the IND is surprised about the fact that the girls do not know how the accident with an uncle, ten years ago, could have happened. In the decision, The IND had this to say: "*It is true that they were very young at the time (3 and 4 years old), but it's strange that they never talked about it."*

The Ombudsman for Children finds it shocking that the IND answers this as if they objected to these children. The event occurred in the distant past and it is unlikely that details of the events surrounding the death of the uncle would have been discussed within the family afterwards.

It is striking that the IND often make assertions with great certainty about what may be expected from a child, as in the following passages from IND decisions:

"If the mother did not work on Friday, the daughter (17 years) must have known that"

The Ombudsman for Children has found that there is hardly any basis on which the IND makes these assumptions. The IND does not have expertise from experts in development, or anybody else, in order to make this assertion. On what basis does the IND decide what information a child should be able to provide? The case decision officials state that they base their evaluation of what can be expected from a child on common sense. They do this by sometimes taking their own children, or children they know, as a reference point. So states a case decision official: "My child knows in what corner of the room the computer is". The Ombudsman for Children cannot understand why case decision officials (should) rely on their own experience. After all, it is clear that the children who submit an application for family reunification live in a completely different context and this can have an effect on what they can be reasonably expected to explain. The case decision officials therefore need more staff guidance so they do not have to depend on their own frame of reference to evaluate what is, and is not, expected from a child. The case decision officials themselves state that if they were more aware of the development of children, they would find it very useful for their work.

6. Biasing factors: strong focus on signs of fraud prevents openness in the IND

The case decision officials are informed by the IND Policy Department via internal work instructions about signs of fraud and abuse in the procedure for travelling in connection with family reunification, and it is here that they are told to be alert. The question is whether there is too much emphasis on the detection of fraud, which results in more attention being paid to contradictions than consistencies in the statements. In one of the IND work instructions it is described:

"In exceptional cases, in other nationalities concerning travel in connection with family reunification, there is no doubt about the actual family connection." [78]

From here, it was clear that there should almost always be doubt from the beginning about the actual family connection. The Ombudsman for Children has experienced an attitude that assumes that fraud is in play at all stages of the procedure, especially when it comes to Somali children. This raises serious concerns. The starting point, especially when it comes to children

[78] IND work instruction 2011/12, 23 August 2011.

and the bringing together of families, should be that a family connection exists unless there are very strong signs that this is not so and for example, there is trafficking or forcible removal of children from their parent.

The Ombudsman for Children has concerns about the objectivity and openness with which IND case decision officials can decide on the applications to travel in connection with family reunification. The Ombudsman for Children has found that the functions of the hearing official and the case decision official are not always be strictly separated. The hearing official´s task is to ask questions and to make a record of what was said by the child, without providing an evaluation of the plausibility or credibility of the story. That task belongs to the case decision official. However, the Ombudsman for Children has found that in a large number of cases, 36% of the qualitatively examined case files, the hearing official sent an observation, opinion or recommendation on the interview report to the case decision official. The case decision officials state that they cannot use this information in their consideration, when this is only sent in an e-mail and not in the interview report and that they therefore ignore this recommendation. However, it is not out of the question that the hearing official's observations influence the evaluation by the case decision official. After all, if the hearing official has already stated that he does not deem there to be a plausible family connection, the case decision official cannot begin to evaluate the statements from a completely unbiased frame of mind.

"Poor" hearing observations may add colour to the story. Two examples:

The hearing official provides information to the case decision official that the boy has stated that he is paralysed on one side, but the hearing official reports that, during the hearing, the boy can still write with the hand on that side.

The hearing official reports that the child speaks and understands English, while the child has already stated himself that he is unable to speak English.

This is an observation but, consciously or unconsciously, it has added colour to the story. This can affect the perception of the case decision official and affect their objective judgment.

In other cases, the observations of the hearing official go beyond a simple observation, as in the following examples:

"I have big questions myself about the statements concerning factual co-habitation (in H), but you should look into that"
"The hearings with ... and ... were very difficult due to the high, "I do not know" and "I was little" content. It then concludes with: Based on the above facts, the alleged family connection is unlikely. Our recommendation: reject"

"We (the hearing officials) believe that so many contradictory statements have been made that their veracity should be seriously doubted. Good luck with your decision."

"From the details, a picture comes forward where it appears that the two foster children have not formed a part of the sponsor's family. There are simply too many questions that remain unanswered. Often, we had to wait a long time for them to respond. Pay attention to what R. and L. do and do not state about the child of S. Also, they seem to know nothing about the neighbourhood where they always lived. Remarkably, neither child remembers the manner of travel or the places along the route towards M."

"Although there are quite a few statements from the persons concerned that are consistent with the other, there is still a strong doubt that a family connection existed. Especially the statements of the spouse. However, this is only concerning the question of whether the two foster children formed a part of the family. See contradictory statements regarding: (summary). In view of this, the recommendation with respect to the foster children is a negative recommendation." (sic).

"Family connection with foster children not made plausible, see contradictory statements regarding: (summary). Recommendation: reject applications."

After some comments, among other things, that the person concerned seemed *"particularly well rehearsed",* the researcher recommends to *"dismiss this case or request simultaneous supplementary hearings about one or two themes (without a complete interview).*

"Dear colleague, please find enclosed the interview report (reaction to interview by person concerned...) Remarks from the embassy concerning the interview with the foster children:
- *"both children were very practiced and continued to give the same information repeatedly. I. says, for example, that at first she did not know what her grandmother had, and later she said that she was still sick. Persons concerned seem to be deliberately providing limited and confusing information.*
- *the parents of the foster children are alive and living in M. The children can be taken in by their own parents instead of the sponsor; there is no authorisation from the parents of the foster children for travel in connection with family reunification.*
- *whether there has been a period where they lived with the sponsor, this cannot be assumed on the basis of this interview. Sponsor is the brother of the foster children, but has no equivalent parent-child relationship.*

Considering the above statements, I do not think there is a relationship between person concerned and sponsor.
If you wish to go against the recommendation of the embassy and provide a positive decision, this embassy would like to know how the doubts provided by the embassy were dealt with.
Yours faithfully, Consular department"

To ensure a completely unbiased evaluation of the hearing reports, it is not desirable that information supplied by the hearing official can provide or add certain colour to the story. Even if this information is not formally included in the decision, it can still influence the evaluation by the case decision official and thus, have negative consequences for the child. This was clear in a statement made by a case decision official: "If there is doubt at the embassy about the age of the child, then I ask myself what I might be able to believe form the rest of statements".

7. Lack of clarity concerning the exact grounds for rejection

In the laws and regulations relating to those who travel in connection with family reunification, four grounds for rejection are defined. In many IND decisions, the grounds for rejection of an application are not always made clear. In the vast majority of case files, the rejection will be supported because it is deemed implausible that an actual family connection exists, based on contradictory statements. It is not made sufficiently clear whether, according to the IND, the family connection was broken (and in what period the family connection was broken and why), there was no family connection in the country of origin, or whether a family connection ever existed in the first place.

8. Long turnaround times

The UNCRC states that applications from children to reunite with their parents should be treated expeditiously.[79] The Ombudsman for Children has noticed that the Dutch government has not made sufficient effort in recent years to meet this obligation.

Because of the many parties involved in the procedure for travelling in connection with family reunification, as well as the high number of applications at several diplomatic posts in recent years, the turnaround time has been very long. The following are the average turnaround times from the period 2008 - 2011; however, they are not specified by nationality or diplomatic post by the IND. The investigation carried out by the Ombudsman for Children shows that in some cases, the turnaround time can be several years. Therefore, the averages can provide a distorted picture.

Table 13: Average turnaround time (in weeks) for the processing of applications to travel in connection with family reunification

2008	2009	2010	2011
13	15	13	26

Source: Ministerie van Binnenlandse Zaken (Ministry of the Interior) (2012)

The Ombudsman for Children finds that the IND has reacted too late to applications in increasing numbers and, moreover, it can be seen that turnaround times have increased significantly since the introduction of the identification hearings. Particularly in the period 2010 - 2011, there was a huge backlog at the IND for evaluating these applications. In particular, the processing of Somali applications increased significantly.[80] In 2011, the IND attempted to reduce the turnaround times by deploying additional capacity for the evaluation of applications to travel in connection with family reunification.

The Ombudsman for Children considers the long turnaround times in recent years to be unacceptable. These applications must be treated within a reasonable time and the

[79] UNCRC, Article 10
[80] IND Information Analysis Centre, Evaluation of Policy Changes - Somalia (April 2010) p. 22.

responsibility for this is greater in the event that the application involves children. Many of these children find themselves in vulnerable conditions. For Somali children in Addis Ababa and Nairobi, this may mean that they are staying illegally in Ethiopia or Kenya; that they are not receiving an education; that often they can barely leave the house; and that their parents or relatives cannot work to gain an income. Applications from minors are not prioritised, even if these children are alone. In some cases, VluchtelingenWerk (the Dutch Council for Refugees) or a lawyer will submit an emergency case to the embassy that should be treated expeditiously; for example, if there are compelling medical reasons. At the time the application is submitted at the embassy, it is not standard practise for it to be treated expeditiously. The embassies do not always grant such a request and ask for proof that there is, in fact, an emergency. They do not always agree with the reasoning that priority is required in the processing of the application from, for example, VluchtelingenWerk (the Dutch Council for Refugees).

There are a number of factors that influence the turnaround times:

- In March 2010, it was decided that when an application for a recommendation was submitted, no investigation would be initiated to establish the existence of a family connection. The application for a recommendation was rejected as standard practise and the investigation was only started when the family members themselves reported to the embassy for an application.
- Because only two hearing officials work at the diplomatic posts in Nairobi and Addis Ababa (and in the past there was only one), there is a backlog here. Therefore, the IND has failed to respond adequately to the increasing number of applications. After a child has submitted an application, it can, and often does, take several weeks before a child can be heard. In the past, this period has been even longer.
- In the past, there were too few employees who made decisions in cases of travel in connection with family reunification and time ran quickly before a decision was issued.
- No figures are kept by the IND concerning the percentage number of objections that are upheld, but interviews with the case decision officials show that it is relatively high. An estimate is made of between 30 to 40%. That means that applications were initially rejected too quickly and these mistakes needed to be fixed later during the appeal proceedings. In the objection phase, the applicant is only able to clarify any contradictions that have been found, for example, by providing more information, because only the hearing report will be sent and can be seen when the decision is made.
- There are cases where during the appeal phase, whether through an appeal brought up by the parent or through the IND, the making of a final decision is postponed. It can therefore take months before the child gets clarity. Of course, the IND only has a limited influence on how the appeal phase moves forward, but it does have a responsibility towards the child to prevent a decision being reversed by the court because the IND is insufficiently motivated. There are no records of how many decisions have been reversed by the court due to a lack of motivation. Additionally, there is no consideration made by the IND about whether or not a court´s decision should be bought before a higher appellate court. What happens at the moment is that the (almost) standard practise does not take the child's best interests into account. .
- There is too little clarity about what the parent to whom the child wants to travel must do in order to get a declaration of consent from the parent who has stayed behind. If this parent has no contact with their (ex-) partner, or if they are lost or untraceable (and possibly deceased, or in the meantime deceased), the parent in the Netherlands must make sufficient effort to find this person or determine whether they are deceased. A

decision is often delayed for a long time because proof of the search cannot be submitted.

Case Study 3
A Somali refugee has six children. In 1999, her husband goes missing and is assumed deceased. Her brother-in-law, the brother of her husband, wants her to marry him. She refuses and he takes all the children away from her. She then flees to the Netherlands. In 2009, she manages to get in touch with her children again. It appeared that the children were locked in a house by her brother-in-law and, only after he died in a car accident, was an aunt able to free them. The fact that the children were taken from her is not in question. On the basis of her hearing, she gets a permit on the b-ground. Once she has her asylum permit, she asks for reunification. The children travel with their aunt to Ethiopia. She spends some time with them in Addis Ababa but then returns to Somalia. The children now live alone in a small room in Addis Ababa. The application is dismissed in April 2010 (at which time all outstanding applications for a recommendation were rejected because of the sudden decision to stop investigations during the recommendation procedure). In 2010, the children submit an MVV (Temporary Residence Permit) application to the embassy. A DNA test is offered to ascertain whether they are indeed her biological children. About half a year later, and a year since their mother had placed an application for a recommendation, the identification hearings with all the children take place. The children are between 12 and 19 years old. In total, they were required to answer 925 questions between them. All the children were especially questioned about the period after their mother had fled and their trip to Ethiopia. They gave the same answers for most of the 925 questions about the death of their grandmother, their enforced stay with their uncle, his involvement with a rebel group, and the aunt who freed them and brought them to Addis. The application is rejected because of contradictions concerning who slept where (were there one or two rooms), who cooked, how long they were forced to stay with the uncle and their trip to Ethiopia.

9. Lack of clarity about when a child has been (permanently) taken in by another family
There is a lack of clarity about when it can be considered that a child has been (permanently) taken in by another family. The room for interpretation by the case decision official is too large and there is little consistency in the way case decision officials have acted on this. One employee states that, in principle, an assumption will be made that the child has been taken in by another family if the child lives with a family member, for example, a grandmother or aunt. Another employee states that this conclusion should not be arrived at so quickly and more information is required.

The Ombudsman for Children considers it harmful that the taking in of the child into another family may lead to the conclusion that the family connection has been broken, which leads to the application being rejected. Especially considering the fact that during the hearings there is not enough careful investigation into how the child has been taken in by the 'new' family, or whether care for the child in that family is guaranteed in the future. In current practice, the hearing does not do this; there may be a few brief questions about the situation in which the child now lives and who takes care of him. However, this is limited to a few questions about adults who may be in the vicinity of the child and who (partly) provide care. The nature and character of this connection, how the child sees the relationship and whether this is a permanent situation is not checked during the hearing.

From both the case file investigation and the interviews with the case decision officials, it is clear that if an adult is present in the child's environment (this does not necessarily have to be a relative or a person who does not live under the same roof as the child) and, for example, brings food, this may be enough to convince the IND that the child has already been taken in by another family. The Ombudsman for Children finds that in recent years, the IND has carelessly tested whether children have actually been permanently and with intent (of both the biological parents and the foster parents) taken in by another family and whether that has been good for the children in that particular situation. Because it is stipulated in legislation that permanent inclusion in another family may be a reason to assume that the family connection has been broken, children may be incorrectly rejected on this ground.

The court has also ruled on the question of when a family connection can be considered to be broken. In its decision of 5 October 2011, the Raad van State (RvS) (Council of State) ruled that the family can only be temporarily broken, and that the flight of the sponsor can be the cause for the child to be taken in by another family. [81] This judgment is demonstrates that the fact that the children temporarily live with another family is not a decisive factor when making a decision about the actual family connection. [82] The intent of the parents, the circumstances surrounding the flight, and the consequences for the children should also be taken into account. [83] The Raad van State (RvS) (Council of State) also considers that, in such cases, the decision that the family connection is broken is an interpretation of the policy that is too strict.

10. Lack of clarity concerning the declaration of consent

The Ombudsman for Children is of the opinion that a declaration of consent from the parent staying behind is certainly important when the child wants to travel to the Netherlands. The Dutch government, correctly, does not want to participate in the illegal removal of children from their parents and therefore, correctly asks for a declaration of consent. In some cases, however, this requirement has yielded problems for children because it can be held against them by the IND whereby they need to make more effort to get a declaration of consent or provide proof of the parent being deceased or missing. This is not possible in all situations. Especially in countries where no death certificates are issued, such as Somalia. The IND requires that the parent in the Netherlands requests help from international organisations, such as the UNHCR and the Red Cross, to trace a missing parent, and in any case to submit a statement from these organisations with a declaration that a request was made to them. Lawyers, however, indicate that in actual fact, these organisations do not provide assistance in the search for lost parents and that they also do not provide written statements as such. Inquiries with the UNHCR by the Ombudsman for Children reveal that it is, indeed, very difficult to look for a missing parent without any clues about a possible residence. The Red Cross states that they reject these requests because the request does not meet the criteria established by the organisation for the deployment of *tracing* activities. These criteria are known by the Ombudsman for Children and will be communicated to the applicant in individual cases.

It is not clear exactly what the IND requires from the parent in order to get a declaration of consent, and what must be done to show that sufficient effort has been made or that a missing consent form is not the fault of the parent and the child. The result is that a decision on an application is often delayed by months.

[81] ABRvS, 5 October 2011, 201008478/1/V2, r.o. 2.2.1 - 2.2.3.
[82] ABRvS, 5 October 2011, 201008478/1/V2, r.o. 2.2.1 - 2.2.3.
[83] ABRvS, 5 October 2011, 201008478/1/V2, r.o. 2.2.1 - 2.2.3.

Case Study 4

A Somali mother who fled to the Netherlands has five biological children. The four eldest children are from the same father, the youngest from another father. The children are staying alone in Ethiopia. The youngest is 3 years of age, the oldest is 14. No DNA testing is carried out because contradictions are found in the statements of the eldest son and the mother, upon which grounds the family connection, also with the younger children who could not be interviewed, is deemed to be likely. The application was ultimately rejected on the basis of the requirement for a declaration of consent. The IND had this to say about the decision: "sponsor states in her letter that the fathers of her children cannot be traced, but this simple statement, without documentary evidence, will not be followed. After all, even in a country like Somalia, it is possible to trace missing persons. It had laid out in the reasoning that the sponsor had made demonstrable efforts with international organisations, such as the International Red Cross, to look for the biological parents of the persons concerned". The IND hereby does not specify which documentary evidence is required and ignores the fact that international organisations, such as the International Red Cross, have not provided statements that the missing persons cannot be found. The court in Haarlem decided in a ruling that, in short, the requirement for a declaration of consent takes precedence over any other evaluation and that, because the declaration of consent could not be submitted, and it is deemed likely that the requirement could have been complied with, the appeal was unfounded. That is how the evaluation of the family connection came to the conclusion that it was unlikely that there was a family connection any more.

The lawyer argues that the mother and her children have consistently argued that the fathers have not played a part in the family since 2006 and 2008 respectively. This is, in any case, put forward during the mother´s asylum procedure in the accompanying letter for the application for family reunification from VluchtelingenWerk (the Dutch Council for Refugees) on the grounds of the objection made by the mother during the hearing and during the hearing of the eldest son:

When was the last time you saw your father?
I can't remember.

Do you still have memories of your father?
No, I can´t remember his face and furthermore, I can´t remember him.

Where do you think your father is now?
I don't know

Why is your father not with you?
I don´t know

Has no one told you?
No

Is your father still alive?
I don't know

Do you know any of your father´s family members?

No.
Case Study 4 continued
The mother states she is divorced, the children were left with her, and that the fathers have not bothered with them. They are no longer a part of the family. Mother and son have stated that they no longer have any contact with (respectively), the former husband and father. The statements of mother are considered consistent and plausible: The asylum request of the sponsor has led to the granting of a C-status. The story, among others, was the fact that sponsor was divorced and her current husband could no longer be found. Therefore, she was alone with her children during the period that the problems with Al Shabaab (including the murder of her brother) arose. The whole question in the asylum procedure is based on this, which has led to the granting of the status. It is not clear why these and all other statements are not taken into account during the procedure for travel in connection with family reunification, and why they have not led to the conclusion that it is plausible that the fathers had no involvement with the children after the fathers separated themselves from the mother. This, incidentally, has been the subject of dispute. According to the lawyer, the court disregarded the information that had been submitted during the procedure: that the mother now has custody of the children and that the fathers no longer carry any weight since they left the family.

4.5 Conclusions

1. **The percentage of accepted applications from children to reunite with their parent has fallen sharply from 2008.** The percentage of acceptances has fallen quickly after 2008. This applies to both biological children, as well as foster and stepchildren. The rejection rate among foster children and stepchildren is significantly higher than among biological children.

2. **Children need to wait too long for a final decision**
   The IND has not responded adequately enough to the rising number of applications for family reunification since 2008. This has created a large backlog of applications that require evaluation. Moreover, the introduction of the interviews led to longer turnaround times because too few hearing officials were available at the embassies to conduct the hearings. Since 2008, children have had to wait an unlawfully long time for a final decision, and this period of time does not meet the UNCRC requirement that all applications for family reunification should be handled expeditiously.

3. **The majority of the children are dismissed because the family connection is not made plausible during the hearings**
   During the hearings, it is only possible with a few children to successfully prove that a family connection existed with the parent in the Netherlands at the time this parent left the country of origin. The vast majority of applications are rejected on these grounds. In these cases, the IND concluded that there are too many contradictions between the statements of the child and the parent (or siblings). [84]

[84] The applications from children could also be rejected on the basis of contradictions during the hearings with their parents, or the brothers and sisters, without being heard themselves. These case files have not been included in the qualitative case file investigation carried out by the Ombudsman for Children.

4. **The conclusion that the child and parent have not formed a family at the time of departure of the fleeing parent is drawn too quickly**
   Only a few contradictions, about small details in the statements, can lead to a rejection. The Ombudsman for Children has seen that, while making decisions based on the hearing reports, the IND often has unrealistic expectations as to what a child can explain about the family connection.

5. **Too little account is taken into account of the limitations of the hearings during the decision making phase**
   As discussed in the previous chapter, the investigation has shown that, in connection with establishing the plausibility of the family connection, many serious shortcomings influence the reliability of the children's statements - such as problems with the translation, questions that relate to occurrences from many years in the past, or the pressure that the child is under during the hearing. In making a decision about the applications, the IND takes too little consideration of this and compares the statements in too much detail.

6. **IND case decision officials have little guidance for the evaluation of the family connection**
   The IND case decision officials have little guidance to carefully form a judgement about the existence of a family connection. They have too little knowledge to be able to evaluate what can be reasonably expected of a child, considering the age and level of development. Many assumptions have been made about what may be expected from a child's statements, but the Ombudsman for Children has found that there is little basis upon which the IND makes these assumptions. The IND does not have expertise from experts in development, or anybody else, in order to make this assertion. During the evaluation of the family connection, the case decision officials make too much use of their own frame of reference and "common sense", which results in little consistency in the way the IND makes decision about these applications.

7. **Strong focus on contradictions in statements**
   When evaluating the hearing reports, too much attention is paid to the contradictions in the statements. The Ombudsman for Children is concerned about the objectivity of case decision officials when they are evaluating case files, considering the strong emphasis on the fight against fraud and abuse at the IND. In the decision, a clear comparative assessment of the consistencies and contradictions made in the statements is not made and therefore, the reason why a family connection is considered to be implausible is not sufficiently substantiated.

4.6 Recommendations with respect to decisions made in cases of travel in connection with family reunification

1. Discuss and evaluate the attitude of IND employees who make decisions in the cases of travel in connection with family reunification. Ensure that employees are not biased toward the fight against fraud and abuse and ensure that they remain as neutral as possible when evaluating the applications.
2. No longer reject children´s applications on the grounds of detailed contradictions in their statements.

3. Make sure there is more consistency in the manner that case decision officials evaluate the statements of children. Offer them more guidance for the interpretation of key definitions of legislation and policy.

4. Provide better training to the case decision officials who must evaluate the hearings of children, whereby things such as the level of development of children of different ages is covered, as well as the effect that traumatic experiences will have on the reliability of the statements made by the children. Also, ensure case decision officials are provided with better and more active training about the cultural context from which the largest groups of applicant children will come.

5. Make it explicitly clear how much time has elapsed between the hearing and the situation about which the child has been interviewed. Then the case decision official must decide whether or not to take this into account when making the decision.

6. When making the decision, take into account those signs from the investigation that support the family connection, as well as those that do not. When making the decision, make it clear how the contradictions and consistencies have been weighed against one another in the statements. In the event of a rejection, make it clear why any of the stated points that are consistent have not led to acceptance of the application.

7. Support the decision with the assumptions about what can be expected from a child.

8. Clearly set out what is expected from the family in terms of the efforts to obtain a declaration of consent from a remaining parent, when this parent is no longer in the picture. Discuss with international organisations that can help the families, the type of help that can be offered by these international organisations so that families are not required to make unrealistic efforts.

9. Avoid unnecessarily long procedures by responding adequately to increasing numbers of applications through the deployment of flexible forces and preventing decisions unnecessarily being overturned in the objection or appeal phase (for example, by ensuring that the initial decision is always fully motivated). The Ombudsman for Children asks that the responsible minister show restraint in the interests of the child when making an appeal as a means of challenging a court decision.