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5.1.5 Detention and return of minors

d return of minors were scrutinised in the course of 2020. For example, in *Moustahi* v *France*, the ECtHR ruled that it was not in the children's best interests when they were detained with unrelated adults in France and then returned to Comoros without an adequate individual assessment. The court underlined that keeping the children in a detention centre could have "caused them stress and anxiety, with particularly traumatic repercussions for their mental state".

Likewise, the CRC found that Switzerland failed to assess the children's best interests when there was no direct hearing pending a Dublin transfer of a family. The CRC recommended that national authorities should not impose an age limit in law or in practice as this could limit the children's right to be heard and to express their views regarding their personal circumstances. In this case, the CRC noted that the Swiss authorities did not consider the traumatic conditions that the children had experienced by fleeing their country of origin twice, due to a previous return *(see Section 4.2)*

In March 2002, the Netherlands amended the rules for unaccompanied minors who cannot return to their home country through no fault of their own. The change aimed to clarify the situation and prevent repeated applications. Unaccompanied minors may be eligible for the 'no-fault' residence permit if it is shown that a return to the country of origin was impossible within a maximum timeframe of 3 years. The Aliens Circular was amended accordingly to start following the first asylum application.[1296]

Following the 'Interest of Children in Foreigners' Law' project, a new project, 'Cooperation for Children in Foreigners' Policy' *(Samenwerkingsverband Kinderen in het Vreemdelingenbeleid)*, was established between the IND, DT&V and the Council for Child Protection *(Raad voor Kinderbescherming, RvdK)*. A contact person was appointed from each organisation to find common, sustainable solutions to issues concerning foreign children. This project will also ensure that the best interests of children are sufficiently considered within administrative and immigration laws.[1297]

France and Morocco signed an agreement, which, among others, aims to facilitate the return of unaccompanied children, but civil society organisations were concerned that the agreement itself was not published immediately and still not available in April 2021.[1298], [1299]

[1296] Besluit van de Staatssecretaris van Justitie en Veiligheid van 25 maart 2020, nummer WBV 2020/7, houdende wijziging van de Vreemdelingencirculaire 2000 [Decision of the State Secretary for Justice and Security of 25 March 2020, number WBV 2020/7, amending the Aliens Circular 2000], March 25, 2020. https://zoek.officielebekendmakingen.nl/stcrt-2020-15932.html
[1297] Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst. (2020, March 11). *RvdK, IND en DT&V intensiveren samenwerking voor kinderen in vreemdelingenbeleid [RvdK, IND and DT&V intensify cooperation for children in migration policy]*. https://ind.nl/nieuws/paginas/rvdk,-ind-en-dtv-intensiveren-samenwerking-voor-kinderen-in-vreemdelingenbeleid.aspx
[1298] La Cimade et al. (2020, December 16). *Déclaration d'entente franco-marocaine sur les mineur.es isolé.es, respecter les droits de l'enfant avant tout [Declaration on the French-Moroccan agreement on unaccompanied children, respecting children's rights above all]*. https://www.lacimade.org/presse/declaration-dentente-franco-marocaine-sur-les-mineur-es-isole-es-respecter-les-droits-de-lenfant-avant-tout/
[1299] Le Monde (2020, July 12). La France et le Maroc annoncent un accord sur le retour des mineurs isolés [France and Morocco announce agreement on return of unaccompanied minors]. https://www.lemonde.fr/international/article/2020/12/07/la-france-et-le-maroc-annoncent-un-accord-sur-le-retour-des-mineurs-isoles_6062524_3210.html

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