



Master of Laws: Advanced Studies in International Children's Rights



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The Protection of Children's Rights in Asylum Reception Centers

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“It is the obligation of every person born in a safer room to open the door when someone in danger knocks.”
- Dina Nayer

EXECUTIVE SUMMARY

This thesis explores the extent to which the Dutch asylum reception system complies with its legal obligations under the European Union Reception Conditions Directive and the United Nations Convention on the Rights of the Child. Against the backdrop of a growing number of child asylum seekers in Europe, and persistent reports of inadequate reception conditions, this thesis clarifies the legal standards set by these frameworks and uses the Netherlands as a case study to evaluate their implementation in practice.

Chapter one introduces the research topic, outlines the problem statement, and presents the research questions. It explains the rationale behind focusing on the RCD and CRC as the primary legal frameworks and defines the scope and methodology of the thesis.

The second chapter provides an in-depth overview of the European and international legal frameworks governing the reception of asylum-seeking children. It examines the normative scope of both the RCD and the CRC, highlighting interpretative tools such as General Comments from the Committee on the Rights of the Child and case law. Special attention is given to Article 22 CRC, which directly addresses the rights of refugee and asylum-seeking children.

The thesis then in its third chapter analyzes the substantive rights of asylum-seeking children as defined under both the RCD and the CRC. The chapter addresses the types of reception centers and the issue of child transfers before turning to four core socio-economic rights: education, health, adequate standard of living, and rest, leisure, and play. Each right is assessed under both legal frameworks to identify points of overlap, divergence, and potential normative or practical gaps. This chapter forms the analytical foundation for evaluating Dutch law and practice.

Chapter four applies this legal framework to the Dutch context. It evaluates the legal standards and practical implementation of children's rights in reception centers, with a particular focus on crisis and emergency facilities. Drawing on national legislation, stakeholder reports, and empirical data, the chapter reveals persistent shortcomings in both legal protections and daily practice, which undermine the fulfillment of children's rights.

The final Chapter concludes the thesis by synthesizing the findings and arguing that many of the observed shortcomings reflect structural non-compliance with binding legal obligations under the RCD and the legal standards under the CRC. It proposes targeted legal and policy reforms, such as mandatory best interests' assessments, stronger non-discrimination safeguards, and institutionalized mechanisms for child participation, designed to ensure that asylum-seeking children in the Netherlands can fully enjoy their rights in practice.

In sum, this thesis calls for a fundamental recalibration of Dutch asylum reception policy toward a child rights-based approach. Treating asylum-seeking children first and foremost as rights-holders is not only a legal obligation, but a moral imperative grounded in international and European human rights law.

OVERVIEW OF THE MAIN FINDINGS

This thesis highlights the urgency of centering asylum-seeking children within reception policy and legal analysis, given their specific vulnerabilities and needs, which are often overlooked. While the EU Reception Conditions Directive remains the only legal instrument that specifically addresses reception conditions for countries within the European Union, this thesis demonstrates that the United Nations Convention on the Rights of the Child and its child-specific obligations remain critically relevant.

A central finding of this research is the identification and analysis of a systemic implementation gap between the legal standards enshrined in the RCD and CRC and the reality of reception conditions in the Netherlands. Although Dutch legislation nominally incorporates elements of both instruments, the study reveals that children's rights, particularly in emergency and crisis reception settings, are frequently unmet in practice and that legislation should be changed to ensure safeguards for this group of children.

A second major contribution lies in the comparative legal mapping of four core socio-economic rights: education, health, adequate standard of living, and rest, leisure, and play. This analysis demonstrates that while the RCD offers a general framework for protection, the CRC provides a more comprehensive, child-specific, and holistic framework. This thesis shows how the CRC's interpretive tools can, and should, be used to reinforce and inform the application of the RCD to better serve the interests and needs of asylum-seeking children.

The research also identifies critical normative gaps in the RCD as it relates to children, including the absence of explicit provisions for the right to rest and play, the right to be heard, and mechanisms for meaningful child participation and complaints. These omissions weaken the protective capacity of the RCD when applied to children.

Furthermore, by analyzing Dutch reception practices, the thesis documents the disproportionate impact of frequent relocations and inadequate housing conditions on children's mental health, educational continuity, and overall development. These findings, based on a synthesis of legal texts, stakeholder reports, and empirical evidence, demonstrate not only a lack of policy effectiveness but also a failure to comply with binding international standards.

Finally, the thesis proposes a rights-based reform agenda aimed at strengthening the Dutch reception framework. Recommendations include mandatory best interests' assessments before any transfer, legal prohibitions against discriminatory treatment, child-sensitive training for reception staff, and the institutionalization of child participation mechanisms. Moreover, it praises for a permanent reception infrastructure with flexible capacity and prioritize smaller, community-based facilities that foster child development and well-being.

In sum, this thesis goes beyond a descriptive account of legal obligations. It offers an integrated legal and practical critique of the Dutch reception system, supported by normative recommendations grounded in international children's rights law. It emphasizes that asylum-seeking children must be treated first and foremost as rights-holders, and that compliance with legal obligations under the CRC and RCD is not only necessary but ethically imperative.

KEYWORDS

ASYLUM-SEEKING CHILDREN – DUTCH ASYLUM RECEPTION SYSTEM – THE CONVENTIION ON THE RIGHTS OF THE CHILD – THE EU RECEPTION CONDITION DIRECTIVE - THE RIGHT TO EDUCATION – THE RIGHT TO HEALTH – THE RIGHT TO AN ADEQUATE STANDARD OF LIFE – THE RIGHT TO PLAY, REST, AND LEISURE

LIST OF ABBREVIATIONS AND ACRONYMS

CEAS – Common European Asylum System

Charter - EU Charter of Fundamental Rights

COA – Centraal Orgaan opvang Asielzoekers (Central Agency for the Reception of Asylum Seekers)

CNO – Crisisnoodopvang (Crisis Emergency Reception)

CRC – United Nations Convention on the Rights of the Child

Committee – Committee on the Rights of the Child

CJEU – Court of Justice of the European Union

ECtHR – European Court of Human Rights

EU – European Union

EUAA – European Union Agency for Asylum

GC – General Comment

GZA – Gezondheidszorg Asielzoekers (Asylum Seeker Healthcare Service)

ICESCR – International Covenant on Economic, Social and Cultural Rights

NGO – Non-Governmental Organization

OPIC – Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

PEL – Primary Education Law

RCD – EU Reception Conditions Directive

RVA – Regeling Verstrekkingen Asielzoekers (Regulation on Provisions for Asylum Seekers – Netherlands)

SEL – Secondary Education Law (Netherlands)

TFEU - Treaty on the Functioning of the European Union

TGO – Tijdelijke Gemeentelijke Opvang (Temporary Municipal Reception)

UNHCR – United Nations High Commissioner for Refugees

UNGA – United Nations General Assembly

VNG - Vereniging van Nederlandse Gemeenten (Association of Dutch Municipalities)

VWN – VluchtelingenWerk Nederland (Dutch Council for Refugees)

1. INTRODUCTION

1.1. Problem Statement

The movement of children across international borders, whether accompanied or alone, has become a persistent and complex feature of global migration.¹ Many of these children undertake long and dangerous journeys in search of safety, only to face new challenges upon arrival in host countries. Once they arrived in these unfamiliar environments, they are expected to navigate new languages, cultures, and legal systems while their asylum claims are being processed.² The reasons for undertaking such journeys vary but often include persecution, conflict, trafficking, and the pursuit of better economic opportunities.³

An asylum-seeker is defined as an individual, including a child, who has crossed an international border in search of international protection but has not yet received formal recognition as a refugee.⁴ During the asylum process, these individuals are entitled to certain protections.⁵ Nonetheless, it has been said that being an asylum-seeker often limits or even strips access to key rights, which in turn makes this group very vulnerable.⁶

There is no universal template for reception arrangements for asylum seekers who are awaiting their decision.⁷ Nonetheless, at the European level, the European Union (EU) Reception Conditions Directive (RCD) exists, which sets standards for the reception of asylum seekers in EU Member States.⁸ However, the RCD's provisions are generalized and often fail to address the specific obligations to ensure the needs and rights of children, raising critical concerns about whether adequate support is being provided.

¹ Children that cross international borders when being alone, are referred to as unaccompanied children/minors. The Committee on the Rights of the Child has defined these children as: '*children, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.*' See in UN CRC, General Comment No. 6 (2005) on Treatment of Unaccompanied and Separated Children UN doc CRC/GC/6, para 7 + Ciara Smyth, 'Migration, Refugees, and Children's Rights' in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* (Springer 2019), page 422.

² Gertrude Mafoa Quan and Ann Skelton, 'Age Determination of Unaccompanied Migrant Children: An Appraisal of the Jurisprudence of the Committee on the Rights of the Child' (2025) *Nordic Journal of Human Rights*, pp. 59-60.

³ CRC/GC/6, para 2.

⁴ See definition refugee under Article 1 of the UNGA, *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁵ The UN Refugee Agency UNHCR, 'Who we protect' <<https://www.unhcr.org/about-unhcr/who-we-protect/asylum-seekers>> last visited (16-06-2025).

⁶ Filipa Aragão Homem, 'The Right to Education of Asylum-Seeking and Refugee Children in the European Union: Drawing from Experience on the Ground' (2018) 14 *International Journal of Educational Law and Policy* 103, page 106.

⁷ Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 444

⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96.

Additionally, States have a desire to control their borders and populations as part of their sovereignty, which oftentimes creates tension between establishing a rights-based approach to asylum.⁹

Indeed, the EU Agency for Asylum (EUAA) reported in 2023 that many EU+ countries struggle to provide suitable accommodations for asylum seekers, with concerns about substandard living conditions and a lack of essential support services. The report emphasized that children are particularly affected by substandard living conditions, lack of education and healthcare access, and insufficient psychosocial support.¹⁰

In the Netherlands, this challenge is particularly evident. National stakeholders, including the Health and Youth Care Inspectorate and the Central Agency for the Reception of Asylum Seekers (COA), have all highlighted significant shortcomings in the Dutch reception system, which significantly affects children.

While the RCD sets out important standards, it does not operate in isolation. Recital 10 of its preamble acknowledges that Member States are also bound by their obligations under international human rights law, including the United Nations Convention on the Rights of the Child (CRC).¹¹ Recital 9 also refers to the principle of the best interests of the child, a key provision of the CRC under Article 3(1). Thus, Member States are bound by obligations under instruments of international law in addition to the Directive, not as an alternative.¹²

The CRC provides a comprehensive framework of rights for all children within a state's jurisdiction, regardless of nationality, migration or legal status. Therefore, asylum-seeking children are fully entitled to the protections afforded by the CRC.¹³ It explicitly addresses the rights of asylum-seeking and refugee children in Article 22. The CRC, therefore, provides a more detailed and child-specific legal framework, one that should guide the implementation of reception conditions for children in migration.

Nonetheless, there remains a common tendency in domestic asylum systems to view children primarily through the lens of their immigration status, subject to control and suspicion, rather than as children in need of protection.¹⁴ Yet these children have distinct vulnerabilities and developmental needs, as this thesis will demonstrate.¹⁵ As a result, their rights under the CRC are often overlooked, leading to conditions that fail to support their well-being and development.

⁹ Steve Peers et al., 'Reception Conditions' in *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition* (Brill Nijhoff 2020), page 27.

¹⁰ EUAA, Asylum Report 2024 (June 2024), page 130.

¹¹ UNGA, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹² Steve Peers et al., 'Reception Conditions', page 502.

¹³ See CRC/GC/6, para 12.

¹⁴ Jason M Pobjoy, *The Child in International Refugee Law*, page 14.

¹⁵ Jason M Pobjoy, 'Article 22 Refugee Children' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019), page 820.

1.2. Objectives of the Research

This thesis focuses on the rights of asylum-seeking children in reception settings, excluding certain topics due to scope limitations. Thus, while acknowledging that some asylum-seeking children might have disabilities or other vulnerabilities and thus require specific protection, these aspects fall outside the scope of this study. Additionally, this thesis does not address the topic of child detention. The aim is to assess whether the reception conditions for asylum-seeking children align with the standards mandated under both legal frameworks.

One could use a range of international human rights instruments could be used for the analysis of State obligations in asylum reception contexts, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), this thesis limits its focus to the CRC.¹⁶ The Charter of Fundamental Rights of the EU (Charter), although legally binding and relevant to the interpretation and application of the RCD, which will be shown in the next chapter, is not addressed in detail. The Charter seeks to reaffirm those rights that stem from international obligations common to the Member States, such as the CRC, in one document. While the Charter introduces a few novelties, relevant Charter provisions will only be referenced where necessary.¹⁷

Notably, the CRC itself recognizes the value of other international and regional human rights instruments in its preamble. However, given the CRC's status as the *lex specialis* concerning children's rights, this thesis primarily draws on its provisions when analyzing State obligations.¹⁸ Moreover, the RCD is selected as the relevant EU legal framework because it establishes the only standards for asylum reception across the EU.

To ensure a focused and coherent analysis, this thesis examines four core socio-economic rights: education, health, an adequate standard of living, rest, leisure, and play, as they are enshrined in both the RCD and the CRC. It also considers legal standards relevant to asylum-seeking children, such as the types of accommodation and transfers. By examining both normative frameworks in detail, the thesis aims to assess the extent to which the Dutch reception system aligns with their obligations.

The overall argument of the thesis is that the RCD, the CRC, and Dutch domestic law form a triangular legal relationship. The RCD triggers the application of child-specific rights by referencing children's special needs. The CRC then provides the interpretative framework for those rights, while national legislation is responsible for ensuring the effective implementation of both instruments.

¹⁶ UNGA, *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

¹⁷ European Council on Refugees and Exiles, 'The application of the EU Charter of Fundamental Rights to asylum procedural law' (October 2014), page 15.

¹⁸ Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 444.

1.3. Research Questions

This thesis aims to explore the following **research questions**:

Main question

- To what extent does the Dutch asylum reception system comply with the obligations established under the EU Reception Conditions Directive and the United Nations Convention on the Rights of the Child?

Sub-questions

- What are the key provisions of the RCD relevant to the reception of asylum-seeking children?
- What are the relevant obligations under the CRC concerning the reception of asylum-seeking children?
- How do Dutch legal standards on asylum reception conditions uphold the child-specific obligations under the RCD and CRC?
- To what extent do Dutch reception practices align with or diverge from these legal standards?

To answer these questions, the structure of this thesis proceeds as followed. The first chapter provides the introduction. After that, it begins with a chapter that provides the European and International legal framework. Accordingly, the RCD will be described, outlining its historical development and objectives. This sets the foundation for understanding the EU's legal obligations in the context of asylum reception.

Secondly, within the same chapter, the CRC, as the relevant international human rights framework, will be introduced. It presents the normative scope of the CRC, including the interpretive contributions of the Committee on the Rights of the Child (Committee). The subchapter also includes a clarification of Article 22 of the CRC.

The chapter that follows explores what the RCD mentions regarding the types of asylum reception centers and the transfer of asylum seekers, as well as the obligations stemming from the CRC framework. Moreover, a detailed examination of four core rights will be provided, namely, the right to education, the right to health, the right to an adequate standard of living, and the right to rest, leisure, and play. For each right, the thesis first explores its legal articulation under the RCD and then under the CRC framework. This comparative approach enables a systematic evaluation of whether Dutch legislation and reception practices align with the standards established by both legal regimes.

Following this, the analysis focuses on the legal and practical implementation of these rights within the Dutch asylum reception system. Drawing on domestic legislation, empirical data, official reports, and stakeholder assessments, it critically examines the extent to which the Netherlands fulfills its obligations under both the RCD and the CRC.

Finally, the thesis presents a conclusion that synthesizes all the preceding chapters.

1.4. Methodology

This thesis employs a legal doctrinal methodology to examine the extent to which the Dutch asylum reception system complies with the obligations established under the RCD and the CRC. Legal doctrinal research is particularly suited to this study as it focuses on identifying, analyzing, and interpreting legal norms. It will clarify the legal nature, scope, and application of the obligations outlined in both instruments, with particular emphasis on child-specific provisions related to the reception of asylum-seeking children.¹⁹

The research is based primarily on desk-based analysis. The first stage involves a comprehensive examination of the relevant legal frameworks, their characteristics and normative content. Second, it examines both the legal implementation of these standards in Dutch legislation and the practical realization of these rights in the national asylum reception system. To achieve this, this thesis analyzes Dutch regulatory frameworks and draws on qualitative analysis of empirical materials, including inspection reports, parliamentary documents, stakeholder publications, and NGO research. By combining legal analysis with a critical review of the documented implementation practices, the thesis aims to offer a normatively grounded yet contextually informed assessment of the situation of asylum-seeking children in the Netherlands.

¹⁹ Legodesk, 'What do you mean by Legal Research?' (April 28 2020) <<https://legodesk.com/what-is-doctrinal-and-non-doctrinal-legal-research/>> last visited (17-06-2025).

2. THE EUROPEAN AND INTERNATIONAL LEGAL FRAMEWORK

This chapter outlines the key legal instruments that govern the reception of asylum-seeking children in the Netherlands, with a focus on the EU Reception Conditions Directive and the UN Convention on the Rights of the Child. These two instruments form the core normative frameworks that guide the reception and treatment of asylum-seeking children and are thus central to answering the thesis's main research question.

The chapter begins by examining the RCD, the primary EU legislative act regulating the reception of asylum seekers, including children. The second section turns to the CRC, the foundational international treaty on children's rights. In addition to exploring the treaty itself, this section explores the broader interpretative framework developed by the Committee. Special attention is given to Article 22 CRC, which directly addresses the rights of asylum-seeking and refugee children and provides critical guidance on how States must respond to their needs.

2.1. The EU Reception Conditions Directive

The EU Reception Conditions Directive establishes common standards for the treatment of asylum seekers across all EU Member States. It aims to ensure that applicants applying for international protection receive consistent and dignified treatment throughout the EU. These obligations are grounded in Article 78(2)(f) of the Treaty on the Functioning of the EU (TFEU).²⁰

Member States are thus required to provide adequate reception conditions, implement effective monitoring, and oversight mechanisms, and ensure sufficient staff training and resource allocation to meet these standards.²¹ While the RCD creates a common framework, it continues to allow Member States a margin of discretion in how they provide material reception conditions. This flexibility is intended to respect national differences in administrative systems and socioeconomic capacities.²²

Nonetheless, the Court of Justice of the EU (CJEU) has consistently emphasized that the interpretation of the RCD must respect fundamental rights as enshrined in the Charter. In *Cimade and GISTI*, the Court affirmed that all actions under the RCD must be carried out in compliance with the Charter, which became legally binding with the entry into force of the Lisbon Treaty.²³ Under Article 51 Charter, its provisions apply not only to EU institutions but also to Member States when implementing EU law. Therefore, the RCD must be interpreted and applied consistently with the Charter's guarantees.

This position is further reinforced by the CJEU in *Saciri*, which held that reception conditions must be sufficient to ensure a dignified standard of living and be adequate for the health and well-being of applicants

²⁰ Treaty on the Functioning of the European Union (consolidated version) [2016] OJ C202/1.

²¹ EUAA, 'Asylum Report 2024', page 130.

²² EU, 'Reception conditions' <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/reception-conditions_en> last visited (16-06-2025).

²³ Case C-179/11 *Cimade and GISTI v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration* ECLI:EU:C:2012:594, para. 3.

from the moment an application for international protection is lodged.²⁴ Similarly, in *Kamberaj*, the Court referred to Article 34 Charter, which guarantees the right to social and housing assistance to ensure a decent existence for all those lacking sufficient resources.²⁵

The original RCD was adopted in 2003 as part of the first generation of instruments under the Common European Asylum System (CEAS).²⁶ Its purpose was to establish minimum reception standards and marked a significant step toward harmonization across the EU. The reasoning behind its establishment was to discourage asylum seekers from choosing one Member State over another based on reception conditions.²⁷

The first recast of the Directive occurred between 2010 and 2013, culminating in the 2013 RCD, which came into effect in 2015. The recast introduced stronger safeguards for vulnerable applicants, improved standards for material reception conditions, and provided better access to essential services, including education, healthcare, and legal assistance. While it preserved the principles of the 2003 Directive, its stated aim was to improve reception conditions and ensure more consistent and equitable treatment of applicants across Member States.²⁸

In 2016, the European Commission launched proposals aimed at developing a more integrated, sustainable, and solidarity-based EU migration policy.²⁹ Among these was a second recast of the RCD. The 2016 proposal sought to further harmonize reception standards, reduce incentives for secondary movements between Member States, and promote the early integration and self-sufficiency of asylum seekers.³⁰ An additional informal objective, reflected in accompanying documents, was to improve the resilience and crisis preparedness of national reception systems.³¹

²⁴ Case C-79/13 *Saciri and Others v Federaal agentschap voor de opvang van asielzoekers (Fedasil)* ECLI:EU:C:2014:103, para 46. See also Articles 1 and 18 of the Charter.

²⁵ Case C-571/10 *Kamberaj v Istituto per l'Edilizia Sociale della Provincia Autonoma di Bolzano (IPES) and Others* ECLI:EU:C:2012:233, para 92.

²⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, [2003] OJ L31/18.

²⁷ Steve Peers et al., 'Reception Conditions', page 499. See Recital 8 2003 Directive and Recital 12 2013 Directive.

²⁸ *Ibid* page 498.

²⁹ European Council on Refugees and Exiles, ECRE Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 Laying Down Standards for the Reception of Applicants for International Protection (Recast) (September 2024), pp 2-3.

³⁰ European Commission, Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection (Recast) (13 July 2016), pp. 3-4.

³¹ European Commission, Proposal for a Regulation of the European Parliament and of the Council for a European Union Agency for Asylum (4 May 2016).

The 2024 RCD introduces clearer definitions of material reception conditions and more robust requirements for accommodation standards.³² These changes aim to reduce divergences in treatment between Member States and ensure a higher baseline of protection for asylum seekers.³³ The Directive entered into force on June 11, 2024, in accordance with Article 37. Member States are required to transpose the Directive into national law by June 12, 2026, with its provisions applying from that same date.³⁴

Notably, the 2024 RCD remains a directive rather than a regulation, which means that Member States retain discretion over the form and method of implementation.³⁵ This legal form reflects the persistent disparities in the socioeconomic conditions and asylum systems among Member States.³⁶ For example Member States use different forms of reception centers. Moreover, retaining the RCD's original legal form enables other stakeholders, such as NGOs, to play a role in the provision of reception.³⁷ Recital 23 of the 2024 RCD explicitly acknowledges that full harmonization is neither feasible nor desirable under current circumstances but reaffirms the importance of achieving equal treatment through higher common standards.

2.2. The Convention on the Rights of the Child Framework

The United Nations Convention on the Rights of the Child, adopted by the UN General Assembly (UNGA) in 1989, entered into force in 1990. It is the cornerstone of the international legal framework on children's rights as it was the first international instrument to comprehensively articulate the full set of rights applicable to children. With near-universal ratification, it has become the most widely endorsed human rights treaty globally. Its broad acceptance reflects a global consensus that children are entitled to individual rights.³⁸

Although the CRC is at the core of international children's rights, what is referred to in this thesis as the "CRC framework" extends well beyond the treaty's text. The framework includes the interpretative and operational work of the Committee.³⁹ Some of its work involves drafting General Comments (GC) and reviewing the reports of States Parties, and accordingly creating Concluding Observations (CO). These

³² Directive (EU) 2024/1346 of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) [2024] OJ L1350/1.

³³ European Council on Refugees and Exiles, ECRE Comments on the Directive (EU) 2024/1346, page 3.

³⁴ EU, 'Reception conditions for applicants for international protection – EU rules' <<https://eur-lex.europa.eu/legal-content/NL/LSU/?uri=CELEX:32024L1346#:~:text=FROM%20WHEN%20DO%20THE%20RULES,apply%20from%20the%20same%20date>> last visited (26-06-2025).

³⁵ EU, 'Types of legislation' <https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en#:~:text=Directives,how%20to%20reach%20these%20goals> last visited (19-06-2025).

³⁶ European Commission, *Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection (Recast)*, page 6.

³⁷ European Council on Refugees and Exiles, ECRE Comments on the Directive (EU) 2024/1346, page 5.

³⁸ Jason M Pobjoy, *The Child in International Refugee Law*, page 14.

³⁹ Article 43 CRC is the legal basis for the creation of the Committee.

instruments, while formally non-binding, are authoritative interpretations developed by an expert body elected by the States Parties.

GCs provide detailed guidance on how to understand and apply specific articles or thematic areas of the Convention.⁴⁰ The interpretation and recommendation that can be retrieved from these GCs should be considered when Member States develop and implement laws, policies, and programs.⁴¹ COs, issued after each country's periodic review, provide critical assessments of national implementation and recommendations that should inform reform.⁴² Moreover, the Committee's decisions under the Optional Protocol on a Communications Procedure (OPIC) also form part of the CRC framework.⁴³ This Optional Protocol allows the Committee to hear complaints about alleged violations of children's rights.⁴⁴ Lastly, the jurisprudence of regional human rights courts, including the ECtHR and the CJEU, also form part of the CRC framework for two reasons. First, the ECtHR has developed a substantial and ever-growing body of case law concerning children and regularly refers to the General Principles of the CRC in its judgments.⁴⁵ The same can be said about the CJEU, which has also contributed to the recognition and implementation of children's rights.⁴⁶ Secondly, the Committee has used its judgements to make its statements. Therefore, we can observe an interconnectedness between these different bodies.

In the context of asylum, the CRC is particularly significant because it provides a child-specific lens that is often missing from migration and asylum systems. Such systems were designed with only adult applicants in mind. Children are often regarded merely as extensions of adults. Thus, for example, the mandate of the Refugee Convention is age-neutral, applies equally to all individuals regardless of age, and contains no explicit reference to or specific provisions for refugee children.⁴⁷ Only in 2009 did the UNHCR issue the 2009 Guidelines, which address the application of Articles 1(a2) and 1(f) of the Refugee Convention to child

⁴⁰ See UN CRC, General Comment No. 12 (2009) on the Right of the Child to Be Heard (Art. 12) + CRC/GC/6.

⁴¹ Jaap Doek, 'The Human Rights of Children: An Introduction' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer 2019), page 22.

⁴² Ibid page 23.

⁴³ UNGA, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (adopted 19 December 2011, entered into force 14 April 2014) UN doc A/RES/66/138.

⁴⁴ Child Rights Connect, 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC) <[https://opic.childrightsconnect.org/what-is-opic/#:~:text=The%20Optional%20Protocol%20to%20the,the%20Child%20\(the%20Committee\)%20to](https://opic.childrightsconnect.org/what-is-opic/#:~:text=The%20Optional%20Protocol%20to%20the,the%20Child%20(the%20Committee)%20to)> last visited on (16-06-2025).

⁴⁵ Claire Fenton-Glynn, *Children and the European Court of Human Rights* (Oxford University Press 2020), page 1.

⁴⁶ Jaap Doek, 'The Human Rights of Children: An Introduction', page 19.

⁴⁷ Jason M Pobjoy, 'Article 22 Refugee Children', page 822.

asylum claims and also refer to the CRC.⁴⁸ Even during the drafting of the CRC itself, several States wanted to limit the jurisdictional scope of the CRC to apply only to children who are lawfully within the State's territory.⁴⁹ Fortunately, this was changed, and currently, from a children's rights perspective, a child no matter if they are a migrant, refugee, or asylum seeker, is to be treated as a child first and foremost.⁵⁰

This follows from Article 2 CRC, which establishes that the rights in the Convention apply to each child within the jurisdiction. Article 2(1) CRC prohibits discrimination in the enjoyment of Convention rights on several grounds, including "other status", a ground that has been interpreted by the Committee as extending to nationality and even protection status.⁵¹ One can conclude that asylum-seeking children should not be treated differently from nationals in the host country, as this would be discriminatory.⁵²

2.2.1. Article 22 CRC

Article 22 CRC directly addresses refugee and asylum-seeking children. It obliges States to ensure that such children seeking refugee status, whether accompanied or unaccompanied, receive appropriate protection and humanitarian assistance in the enjoyment of their rights under the CRC and other relevant international instruments.

The use of the phrase 'appropriate measures' is significant. It implies a broad and flexible range of obligations. States are required to adopt administrative, legal, policy, and training measures tailored specifically to their vulnerabilities and developmental needs.⁵³ While Article 22 does not define the exact scope of all appropriate measures given the diverse capacities of different States, guidance can be drawn from the Committee's COs.⁵⁴

⁴⁸ Jason M Pobjoy, *The Child in International Refugee Law*, page 25 + See UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A2) and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees* (22 December 2009) UN doc HCR/GIP/09/08.

⁴⁹ Jason M Pobjoy, *The Child in International Refugee Law*, page 14.

⁵⁰ UN CRC and UN CMW, *Joint General Comment No. 3 of the CMW and No. 22 of the CRC (2017) on the General Principles regarding the Human Rights of Children in the Context of International Migration* (16 November 2017) UN docs CRC/C/GC/22 and CMW/C/GC/3, para 11.

⁵¹ See also Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 422 + CRC/GC/6, para 18.

⁵² Jason M Pobjoy, 'Article 22 Refugee Children', page 838.

⁵³ *Ibid* page 836 + CRC/GC/6, para 68.

⁵⁴ See UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ecuador' (2 March 2010) UN doc CRC/C/ECU/CO/4, page 67.

Moreover, the repetitive use of the term ‘appropriate’ throughout the Article underscores that these measures must be adapted to the individual circumstances of each child.⁵⁵ Notably, the Article stipulates that CRC rights always apply, even when awaiting a decision on an asylum application.⁵⁶

When children are unaccompanied or separated from their families, Article 22 must be read in conjunction with Article 20 CRC, which guarantees special protection and assistance for children deprived of their family environment.⁵⁷ Together, these provisions form a “rights-plus” framework: not only must refugee and asylum-seeking children be treated equally to other children, but States must also take proactive steps to meet their additional needs resulting from displacement, trauma, and uncertainty.⁵⁸

2.3. Concluding Remarks

This chapter examined the main legal instruments governing the reception of asylum-seeking children within the European and international context. It demonstrated that the RCD and the CRC differ significantly in their legal structure and level of specificity.

The RCD sets standards for Member States regarding the reception of asylum seekers. Although it contains general provisions that apply to children, it does not systematically incorporate a child-rights-based perspective. Its primary emphasis lies in ensuring human dignity and alignment with the Charter. In contrast, the CRC offers a framework grounded in the principle that children are rights-holders first and foremost. It imposes binding obligations on States Parties to guarantee the rights of all children, including those seeking asylum, without discrimination.

Together, the RCD and CRC form a dual legal framework that shapes the obligations of EU Member States, including the Netherlands, in the reception of asylum-seeking children. Understanding the interplay and distinctions between these instruments is essential for assessing whether Dutch practice aligns with its legal commitments.

⁵⁵ Jason M Pobjoy, ‘Article 22 Refugee Children’, page 838.

⁵⁶ Ibid page 833.

⁵⁷ Ibid page 846.

⁵⁸ Ibid page 854 + Jason M Pobjoy, *The Child in International Refugee Law*, page 22.

3. RECEPTION CONDITIONS AND THE RIGHTS OF THE CHILD

This chapter outlines the content of the legal standards that govern the reception of asylum-seeking children as outlined in the RCD and the CRC. The chapter begins by examining the types of reception centers are considered suitable for children under these legal frameworks and analyzes the standards governing the transfer of children between facilities.

Next, the analysis turns to the four core socio-economic rights. For each of these rights, the chapter compares the obligations imposed by the RCD and the CRC, identifying areas of overlap as well as divergence in terms of scope, normative strength, and implementation.

By doing so, this chapter addresses the questions of what the relevant obligations under the RCD and CRC concerning the reception of asylum-seeking children are. The chapter also lays the legal and normative foundation needed to assess the core research question of this thesis.

Unlike the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which allows developing States to progressively realize certain economic rights for non-nationals, the CRC does not permit such limitations.⁵⁹ The CRC applies universally to all children within a state's jurisdiction, regardless of their nationality or migration status, as explained previously.⁶⁰

Notably, in its CO to Bulgaria, the Committee urged the State to allocate sufficient resources to ensure that all children have unhindered and prompt access to essential services. These include education, healthcare, age- and gender-appropriate care arrangements, psychosocial support, and social protection mechanisms.⁶¹ This exemplifies the non-discriminatory nature of children's rights as outlined in the CRC.

The Committee has emphasized that its obligations under the Convention apply to all branches of government and thus include the obligation to establish national legislation.⁶² Moreover, State parties to the convention must ensure that the provisions and principles of the treaty are fully reflected and given legal effect in relevant domestic legislation.⁶³

In the EU context, the 2013 RCD establishes a set of standards for the reception of asylum seekers. Recital 8 makes clear that these standards apply “at all stages and types of procedures” and “in all locations and facilities hosting applicants,” thus ensuring that all applicants, including children, are covered for the duration of their presence on the territory of the Member State. Moreover, Article 17(1) states that material reception

⁵⁹ Jason M Pobjoy, *The Child in International Refugee Law*, page 20. See Article 2(3) ICESCR.

⁶⁰ See Article 2(1) CRC.

⁶¹ UN Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Bulgaria’ (31 May 2024) UN doc CRC/C/BGR/CO/4-6, para 41(c).

⁶² CRC/GC/6, para 13.

⁶³ *Ibid* para 14.

conditions, as defined under Article 2(1g) must be available as soon as an application for international protection is lodged.⁶⁴

3.1. Types of Asylum Reception Centers

The 2013 RCD establishes the legal foundation for reception infrastructure. It defines an “accommodation center” under Article 2(i) as any place used for the collective housing of applicants. Article 18(1) outlines the permissible forms of housing provided in kind, including:

- (a) Premises used for border or transit procedures.
- (b) Accommodation centres that guarantee an adequate standard of living.
- (c) Private houses, flats, hotels, or other adapted premises.

Article 18(3) requires Member States to consider gender- and age-specific needs within the accommodation types (a) and (b). Meanwhile, subparagraph 4 mandates preventive measures against assault and gender-based violence in these same facilities. In addition, Recital 14 emphasizes that the reception of persons with special reception needs must be a primary concern for national authorities.

The 2024 RCD builds upon and retains these obligations. Notably, Article 8(1) allows Member States to assign applicants to a specific geographic area, provided applicants may move freely within it. Under Article 8(3), such allocation must ensure effective access to all rights under the Directive, including procedural guarantees. Importantly, the designated area must be sufficiently large, offer access to essential public infrastructure, and respect the private sphere of applicants.

Furthermore, Recital 22 2013 RCD and Recital 35 2024 RCD explicitly state that the best interests of the child must be considered when making housing arrangements. This principle is further reinforced in Recital 40 of the 2024 RCD, which obliges Member States to implement appropriate safeguards for all children in migration, including access to safe and suitable accommodation and necessary support services, in line with obligations under national, EU, and international law.

Both Directives under Articles 18(9) 2013 RCD and Article 20(10) 2024 RCD permit temporary deviations from standard material reception conditions for a reasonable time being as short as possible. Recital 25 of the 2013 Directive clarifies that reception conditions may be reduced or withdrawn under specific circumstances but affirms that a “dignified standard of living” must be guaranteed in all cases.

The CJEU has affirmed this principle in several cases. In *Saciri and Others*, the Court held that Member States must always provide reception conditions that meet the basic needs of asylum seekers and ensure a dignified standard of living, including adequate healthcare.⁶⁵ Similar, in *Cimade and GISTI*, the CJEU ruled that reception conditions cannot be withdrawn, even temporarily, unless justified by the applicant’s conduct.⁶⁶

⁶⁴ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU [2024] OJ L1350/1 in its Article 26(1) mentions that an application starts when someone wishes to receive international protection.

⁶⁵ *Saciri*, para 46.

⁶⁶ *Cimade*, para 56 + Steve Peers et al., ‘Reception Conditions’, page 510. See also Article 20 2013 RCD.

The ECtHR in *M.S.S. v Belgium and Greece* reinforced this position, holding that even in cases involving misconduct, failure to guarantee basic needs such as shelter, food, and clothing can violate Article 3 ECHR, which prohibits inhuman and degrading treatment.⁶⁷ In *Haqbin v. Belgium*, the CJEU ruled that sanctions under Article 20(4) 2013 RCD must not undermine a dignified standard of living. The Court held that complete withdrawal of material reception conditions, even as a disciplinary sanction, is impermissible if it prevents applicants from meeting basic needs. All sanctions must be proportionate and consider the applicant's circumstances.⁶⁸

The 2024 RCD reflects these rulings by explicitly requiring that, even in emergencies, Member States guarantee access to healthcare and an adequate standard of living in line with EU law, the Charter of Fundamental Rights, and international obligations. This marks a shift away from vague references to "basic needs" in the 2013 Directive and toward enforceable rights grounded in jurisprudence.

In conclusion, while limited, time-limited deviations may be allowed, any reduction or withdrawal of reception conditions must not compromise human dignity and be proportional. The RCD thus provides a legal framework for assessing the appropriateness of reception settings for children, although the 2024 version offers further safeguards. Both versions affirm that reception must be adapted to the needs of vulnerable applicants. Community-integrated, child-friendly, and rights-based settings are best aligned with the Directive's objectives.

3.2. Transfers of children

The transfer of asylum applicants between reception centers is a common feature of asylum systems. While the RCD addresses this practice explicitly, the CRC does not contain specific provisions on this matter. However, the principles of the best interests of the child and the right to be heard are highly relevant and provide crucial safeguards in this context.

3.2.1. Transfers of Children under the RCD

Under Article 18(6) 2013 RCD, it is required to ensure that transfers between housing facilities occur only when necessary. This foundational protection remains unchanged in the 2024 revision, now found in Article 20(7), but with added safeguards. The 2024 Directive provides that applicants must be given the opportunity to inform their legal representatives or counsellors of both the transfer and their new address.

The concept of a representative is defined in Article 2(j) of the 2013 RCD. A similar definition is retained in the 2024 RCD. Their role is to ensure the child's best interests are upheld and to exercise legal capacity on their behalf when needed.⁶⁹

Both Article 24(2) of the 2013 RCD and Article 27(9) of the 2024 RCD further emphasize that changes in the residence of unaccompanied minors should be minimized. In addition to these safeguards, Article 7(3)

⁶⁷ *M.S.S. v Belgium and Greece*, App no 30696/09 (ECtHR, 21 January 2011) + Steve Peers et al., 'Reception Conditions', page 511.

⁶⁸ European Council on Refugees and Exiles, *Jurisprudence on Material Reception Conditions in Asylum* (ECRE 2023), page 15.

⁶⁹ See Article 24(1) 2013 RCD.

of the 2024 RCD obliges Member States to consider objective factors when re-allocating applicants, such as the preservation of family unity and the applicant's specific reception needs.

Both the 2013 and 2024 RCDs require that the best interests of the child be a primary consideration when implementing the provisions of the Directive that involve children.⁷⁰ For the assessment of the child's best interests, their well-being and social development, as well as their background and views must be considered in accordance with their age and maturity. The 2024 RCD expands this framework by adding the need for stability and continuity in care and refers to the form of violence or exploitation, not only trafficking.

Both directives contain provisions allowing for appeals; however, they do not explicitly recognize reallocation decisions or the best interests of the child as grounds for appeal.⁷¹

3.2.2. Transfers of Children under the CRC Framework

Although the CRC does not address transfers explicitly, the Committee has stated that transfers of unaccompanied children should only occur when clearly in the child's best interests, and to ensure continuity of care.⁷²

Article 3 of the CRC establishes that the best interests of the child must be a primary consideration in all decisions affecting them. Implementing this principle requires a comprehensive, rights-based approach that involves assessing a child's physical, psychological, moral, and spiritual well-being and upholding the child's human dignity.⁷³ Decisions must be made on a case-by-case basis, taking into account every child's age, sex, cultural background, family situation, and environment.⁷⁴ Any decision-making process affecting a child must thoroughly evaluate its potential impacts, both positive and negative.⁷⁵ Decisions taken, such as a transfer of a child, must thus clearly reflect that the child's best interests have been given primary consideration.⁷⁶

The Committee has affirmed that administrative decisions in asylum contexts must prioritize the child's best interests and that mechanisms should exist to appeal or review decisions where a child believes this principle was not upheld.⁷⁷

⁷⁰ See Articles 23(1) 2013 RCD and 26(1) 2024 RCD.

⁷¹ See Articles 26(1) 2013 RCD and 29(1) 2024 RCD.

⁷² CRC/GC/6, para 40.

⁷³ UN CRC, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1) UN doc CRC/C/GC/14, para 5.

⁷⁴ Ibid paras 32 + 48.

⁷⁵ Ibid para 6(c).

⁷⁶ Ibid paras 6(c) + 14(b).

⁷⁷ Ibid paras 30 + 98.

Additionally, an assessment of a child's best interests must include respect for the child's right to express their views freely and due weight given to those views in all matters affecting the child.⁷⁸ Article 12 CRC enshrines this right, emphasizing that children capable of forming their own views must be allowed to express them freely in all matters affecting them, and these views must be given due weight.⁷⁹ The Committee has emphasized the importance of respecting this right in all aspects of asylum procedures, thus including transfers.⁸⁰ Information regarding transfers or any other decision must be communicated in a child-friendly and understandable manner.⁸¹

To give effect to this right, accessible complaint mechanisms and remedies must be in place for children whose views have been ignored or inadequately considered.⁸²

3.2.3. Concluding Remarks

Despite these legal safeguards, the practical implementation of transfers remains problematic. A change from standard to reduced reception conditions may trigger a change in the responsible authority. In some cases, emergency accommodation is arranged by humanitarian providers, many of whom are not specialized in services for asylum seekers. These providers may be under-resourced and overstretched, limiting their ability to meet the specific needs of asylum-seeking children and families.⁸³

In conclusion, the transfer of asylum-seekers should not become the norm. The RCD provides a clear legal framework for regulating such transfers, and the 2024 RCD strengthens this framework. Although the CRC does not explicitly address transfers, the best interests of the child and the right to be heard principles are directly applicable and serve as crucial safeguards. Additionally, the CRC is explicit about the need to have complaint mechanisms and remedies available for children, which the RCD does not contain for this issue. Together, the RCD and CRC create a complementary normative framework that obliges States to ensure that transfers are not merely administrative processes but carefully considered decisions that protect the rights, dignity, and well-being of every child.

⁷⁸ CRC/C/GC/14, para 43.

⁷⁹ CRC/C/GC/12, para 1.

⁸⁰ *Ibid* para 123.

⁸¹ UN CRC and UN CMW, Joint General Comment No. 4 of the CMW and No. 23 of the CRC (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (16 November 2017) UN docs CMW/C/GC/4-CRC/C/GC/23, para. 4.

⁸² CRC/C/GC/12, para. 46.

⁸³ European Council on Refugees and Exiles, ECRE Comments on the Directive (EU) 2024/1346, page 19.

3.3. The Right to Education

3.3.1. The Right to Education under the RCD

The RCD establishes education as a fundamental right for all asylum-seeking children. Article 14(1) of the 2013 RCD mandates that access to education must be granted under similar conditions as those applicable to nationals of the host Member State. It allows education to be provided within accommodation centers if necessary. Moreover, the Article also specifies that access to secondary education shall not be withdrawn solely because a child reaches the age of majority.

While comparing the 2013 and 2024 versions of the RCD, it reveals an evolution in the protection of the right to education. While Article 14(2) 2013 RCD requires education to be accessible as soon as possible, and this process should not take longer than three months after an asylum application is submitted, Article 16(2) of the 2024 RCD significantly strengthens this obligation by shortening the maximum period to two months. It also introduces an additional safeguard by stating that except for a one-month temporary measure, education should be provided within the general education system. Both articles of the directives mention the offering of preparatory classes, such as language instruction, when necessary.

The 2024 RCD also adds a qualitative dimension to the right to education. Article 16(1) specifies that the education provided must be of the same quality as that offered to nationals. Moreover, Article 26(3) requires Member States ensure access to necessary school materials for asylum-seeking children.

In addition to the rights of children themselves, the role of those delivering education is addressed. Article 20(8) 2013 Directive requires that individuals providing material reception services, including education within accommodation centers, receive adequate training.

Overall, the comparison between the Directives indicates a shift toward a more inclusive and rights-based approach to education. The 2024 Directive enhances both the timeliness and quality of education while emphasizing equal treatment and integration into the general education system.

3.3.2. The Right to Education under the CRC Framework

The right to education is widely recognized in several international and regional treaties, as well as in domestic constitutions.⁸⁴ The right to education has been described as a “multiplier right” or an “overarching right”, given its essential role in enabling the enjoyment of many other rights.⁸⁵

While Article 28 CRC gives the right to access of education, Article 29(1) sets out the aims of education, being to promote, support, and protect the core values of the Convention, which are the human dignity

⁸⁴ Christian Courtis and John Tobin, ‘Article 28 The Right to Education’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019), page 1058.

⁸⁵ Robert Brian Howe and Katherine Covell, ‘Fulfilling Obligations’ in *Empowering Children: Children’s Rights Education as a Pathway to Citizenship* (University of Toronto Press 2005), page 33 + Kishore Singh, ‘The Right to Basic Education, International Obligations and Regional Legal Normative Action in Africa’ (2004) 12(1) *African Yearbook of International Law Online* 43, page 437 + UN CRC, General Comment No. 1 on the Aims of Education (2001) UN doc CRC/GC/1, para 6.

innate in every child and their equal and inalienable rights.⁸⁶ Article 29(1) requires that education to be child-centered, child-friendly, and empowering.⁸⁷

Education is defined as something that goes beyond formal schooling and encompasses the broad range of life experiences and learning processes that enable children, individually and collectively, to develop their personalities, talents, and abilities and to live a full and satisfying life within society.⁸⁸ The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society.⁸⁹ This aspect of education is important for asylum-seeking children, as they have to establish themselves in an unfamiliar society.

The first Special Rapporteur on the Rights to Education proposed a conceptual framework commonly known as the '4 As' approach, which identifies the qualitative dimensions of the right to education. According to this framework, education must be available, accessible, acceptable, and adaptable. The Committee frequently draws on this approach when monitoring the reports of State Parties.⁹⁰

Availability refers to the need for sufficient resources, be it human, budgetary, or material. This includes having enough trained teachers, schools, teaching materials, and other facilities to ensure that every child's right to education is fulfilled.⁹¹

Accessibility means that education should be open to all children without discrimination, which aligns with Article 2 of the CRC.⁹² This is also reflected in Article 28, which states that the right to education is to be secured based on equal opportunity. For instance, if a child lives in a remote area with limited access to schooling, the government has a responsibility to facilitate access, such as through transportation solutions.⁹³ The Committee has stated that access to education needs must be ensured throughout all phases of the displacement cycle.⁹⁴

Acceptability addresses the relevance and quality of both educational content and teaching methods. Education must be culturally appropriate and of good quality, consistent with the aims outlined in Article 29 of the CRC. Factors such as the curriculum content, language of instruction, and classroom conditions are

⁸⁶ CRC/GC/1, para 1.

⁸⁷ Ibid para 2.

⁸⁸ Ibid, para 2.

⁸⁹ Ibid, para 12.

⁹⁰ Christian Courtis and John Tobin, 'Article 28 The Right to Education', page 1067.

⁹¹ Ibid page 1067.

⁹² ⁹² Ibid page 1068.

⁹³ Ibid page 1068-1069.

⁹⁴ UN CRC, General Comment No. 6, para 41.

key.⁹⁵ The curriculum must be directly relevant to the child's social, cultural, environmental, and economic context, as well as their present and future needs, and take full account of the child's evolving capacities.⁹⁶ For asylum-seeking children, the principle of acceptability presents challenges. Given the linguistic and cultural diversity within reception centers, it is reasonable to question whether it is feasible for a State to adjust its education provision to meet every child's background and needs, even where resources are technically available. However, the Committee has clearly stated that all unaccompanied children have the right to maintain their cultural identity and values, including the maintenance and development of their native language.⁹⁷

Adaptability requires that education systems be flexible enough to respond to changing societal conditions and the evolving needs of children.⁹⁸ During a humanitarian crisis, education services must thus be responsive and capable of continuing despite disruptions, ensuring that children's learning is not unduly interrupted.⁹⁹ The reason is that education provides stability, structure, and protection in such times.¹⁰⁰

Article 2 of the CRC establishes that States Parties must "respect and ensure" all rights recognized in the Convention. This broad obligation is generally interpreted as encompassing three dimensions: the duty to respect, protect, and fulfil the right in question.¹⁰¹

The obligation to respect requires States and their agents to refrain from actions that interfere with the a child's right to education.¹⁰² This means that the right to education cannot be violated in any way. For example, States may not impose requirements, such as language fluency prerequisites, that effectively block asylum-seeking children from entering the education system.

⁹⁵ Christian Courtis and John Tobin, 'Article 28 The Right to Education', page 1070.

⁹⁶ CRC/GC/1, para 9.

⁹⁷ CRC/GC/6, para 42.

⁹⁸ Christian Courtis and John Tobin, 'Article 28 The Right to Education', page 1070.

⁹⁹ Ibid page 1071. See also UN CRC, General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change UN doc CRC/C/GC/26, para 56: where the Committee has said that states should ensure physical access to schools also amid sandstorms, heatwaves and other severe weather events.

¹⁰⁰ Allison Anderson, Jennifer Hofmann and Peter Hyll-Larsen, 'The Right to Education for Children in Emergencies' (2011) 2 *Journal of International Humanitarian Legal Studies* 84, page 88.

¹⁰¹ Christian Courtis and John Tobin, 'Article 28 The Right to Education', page 1071.

¹⁰² Ibid page 1072.

The obligation to protect compels States to prevent third parties from interfering with children's access to education.¹⁰³ In the context of asylum reception, this includes ensuring that organizations responsible for managing educational access do not discriminate against certain groups.

The obligation to fulfil the right to education means that States must take all appropriate legislative, administrative, and budgetary steps to ensure that children effectively enjoy education in line with the 4 As.¹⁰⁴ Under Article 28, this obligation is subject to progressive realization, considering a State's available resources. This requirement can be explained as the obligation to take immediate steps in developing a plan to realize the right to education and to demonstrate that they are making every possible effort, using all available resources, to secure this right. A country could be under legitimate economic constraint. Nonetheless, this issue should not be the result of mismanagement of the revenue allocation to the education sector.¹⁰⁵ This can be explained by the obligation to progressively realize the right to education, which entails a prohibition against deliberately retrogressive measures, unless there are reasonable and justifiable grounds for such measures. To justify such measures, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact, and fully using its maximum available resources.¹⁰⁶ Thus budget mismanagement, leading to education cuts, is not a valid justification under this framework.

Moreover, the Committee has emphasized that States must adopt special measures to guarantee substantive equality for groups, such as asylum-seeking children.¹⁰⁷ These groups require targeted support to ensure that they are not left behind in accessing their right to education.¹⁰⁸

Although the Committee has not formally adopted the concept of "minimum core obligations" as developed by the Committee on Economic, Social, and Cultural Rights, certain obligations under Article 28 CRC may reasonably be considered core. These include the principles of non-discrimination, the prohibition of interference by non-state actors, and the provision of free primary education. Admittedly, free primary education is resource-intensive, and its implementation is subject to progressive realization. Nevertheless, States are still required to take concrete steps toward that goal.¹⁰⁹ In parallel, the quality of education and

¹⁰³ Christian Curtis and John Tobin, 'Article 28 The Right to Education', page 1072. + See *O'Keeffe v Ireland*, App no 35810/09 (ECtHR, 28 January 2014), para 144: where the ECtHR held that there is an obligation to take reasonable measures to prevent violations by private parties in the provision of education to children.

¹⁰⁴ *Ibid* page 1072.

¹⁰⁵ *Ibid* page 1073.

¹⁰⁶ *Ibid* page 1074.

¹⁰⁷ *Ibid* page 1077 + CRC/GC/6, para 4.

¹⁰⁸ See for example UN CRC, 'Concluding Observations on Luxembourg' (31 March 2005) UN doc CRC/C/15/Add.250, para 48.

¹⁰⁹ Christian Curtis and John Tobin, 'Article 28 The Right to Education', page 1075.

its alignment with the objectives outlined in Article 29 of the CRC are also central to the realization of the right.¹¹⁰

3.3.3. Concluding Remarks

The RCD incorporates several elements that align with the CRC, such as the principle of non-discrimination. In some respects, the RCD even offers stronger guarantees. For example, it explicitly provides that access to secondary education shall not be withdrawn solely because a child reaches the age of majority. In contrast, the CRC defines a child as a person under the age of 18 and does not explicitly address educational rights beyond that age.

Moreover, the RCD appears to imply a degree of parity between access to primary and secondary education. Simultaneously Article 28 CRC distinguishes between these two levels by placing a stronger emphasis on universal and compulsory primary education.

Nonetheless, the CRC provides a more holistic and detailed normative framework regarding the right to education. It outlines that education must be culturally appropriate, acknowledges the role of non-state actors in educational provision, and integrates principles such as the progressive realization of rights by available State resources. Crucially, the CRC requires States to ensure immediate access to education for all children. This stands in contrast to the RCD, which permits a delay of up to three months before access to education must be granted.

3.4. The Right to Health

3.4.1. The Right to Health under the RCD

The right to health is a fundamental human right and is recognized by the RCD as a material reception condition that needs to be established within the asylum reception context. Under the 2013 RCD, Article 17(2) stipulates a dual obligation: it must be ensured that the material reception conditions provided to applicants guarantee subsistence and protect their physical and mental health. Article 19(1) of the 2013 Directive further elaborates on this obligation by mandating that applicants receive necessary healthcare, including, at a minimum, emergency care and essential treatment of illnesses and serious mental disorders.¹¹¹

Moreover, Article 23(4) 2013 RCD specifically targets the needs of children who have experienced trauma. It requires Member States to provide access to rehabilitation services, specialized mental health care, and qualified counselling to children who have been victims of abuse, neglect, exploitation, torture, or armed conflict. This child-specific provision can also be found under Article 26(4) 2024 RCD.

The 2024 revision of the RCD introduces clearer and more expansive protections. Article 22(1) reinforces the obligation of Member States to provide necessary health care to all applicants, regardless of their location within the reception system. It further adds the obligation to include sexual and reproductive health care, which is essential in addressing a serious physical condition. Another significant advancement is Article 22(2), which explicitly requires that minor applicants receive healthcare under the same conditions as nationals. Moreover, Article 19(1) underscores the importance of providing healthcare as soon as an asylum application is submitted, ensuring timely access to necessary services. Meanwhile, where Article 14

¹¹⁰ Christian Courtis and John Tobin, 'Article 28 The Right to Education', page 1075.

¹¹¹ Similarly see Articles 19(2) 2024 RCD.

2013 RCD allowed Member States to conduct medical screening on public health grounds, Recital 46 2024 RCD now makes such screening a requirement for public health purposes, thus emphasizing a more proactive health prevention approach.

Lastly, Article 20(8) of both Directives requires that staff delivering material reception conditions in accommodation facilities receive appropriate training, which implicitly includes health-related awareness and sensitivity.

In summary, while the 2013 RCD laid an important foundation for health protections within the asylum reception framework, the 2024 RCD introduces significant improvements in both clarity and scope. The revised Directive strengthens obligations concerning vulnerable groups, particularly children, by ensuring equal access to healthcare, emphasizing mental health, and mandating specialized support services. It also reinforces the immediacy and quality of care.

3.4.2. The Right to Health under the CRC Framework

The CRC framework views the right to health not as a guarantee of being healthy but as an entitlement to enjoy the highest attainable standard of health and access to services that promote this aim, considering the child's circumstances and the State's available resources.¹¹² Moreover, the right to health also requires that children should live in conditions that enable them to attain the highest standard of health.¹¹³ Like other rights, the right to health is dependent on and is indispensable to the enjoyment of many other rights.¹¹⁴

While States have some discretion in selecting appropriate measures to implement this right, they must take all necessary steps to ensure the measures are effective, rights-consistent, and non-discriminatory.¹¹⁵ In line with Article 4 CRC, States must adopt legislative, administrative, and other measures to realize children's rights, including their right to health. While States enjoy a degree of discretion in how to fulfill their obligations, the prohibition of retrogressive measures means that States cannot reduce healthcare services or access without strong justification.¹¹⁶ Furthermore, when allocating healthcare resources, the Committee has stressed that the best interests of the child must guide all decisions.¹¹⁷ For instance, when establishing a new asylum center that accommodates children, authorities must ensure that the standard of services and facilities is equivalent to or better than those previously provided. Otherwise, the decision may not only fail to uphold the child's best interests but could also constitute a retrogressive measure.

¹¹² John Tobin, 'Article 24 The Right to Health' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019), page 907 + UN CRC, General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24) UN doc CRC/C/GC/15, para 2.

¹¹³ CRC/C/GC/15, para 2.

¹¹⁴ *Ibid* para 7 + CRC/C/GC/26, para 37.

¹¹⁵ John Tobin, 'Article 24 The Right to Health', page 907.

¹¹⁶ *Ibid* page 929.

¹¹⁷ CRC/C/GC/15, para 12.

The Committee has clarified that States must ensure that health care is available, accessible, acceptable, and of good quality. Primary-level services must be widely available, sufficient in quantity, and physically and financially accessible to all children. Secondary and tertiary care must be offered to the extent possible, with well-functioning referral systems linking children and families to all levels of the health system.¹¹⁸

In terms of access to health care, the Committee has reiterated that States are required to provide unaccompanied children the same access as children who are nationals.¹¹⁹ Accordingly States must ensure that children's health is not undermined as a result of discrimination.¹²⁰

The Committee defines acceptability as the obligation to design and implement all health-related facilities, goods, and services in a way that takes full account of and is respectful of medical ethics as well as children's needs, expectations, cultures, views, and languages, paying special attention to certain groups, where necessary.¹²¹

The requirement of "good quality" implies that health-related facilities, goods, and services must be scientifically and medically appropriate, as well as sensitive to children's needs, ultimately leading to a child's enjoyment of the highest attainable standard of health.¹²² This sensitivity approach can be seen in the statement provided by the Committee, where it was said that when ensuring access to health care, it should take into account the events that unaccompanied children might have been through, like loss, trauma, disruption, and violence.¹²³ The Committee has also mentioned that the provision of sanitation must be adequate, as it would otherwise pose a serious threat to children's health.¹²⁴ Additionally, access to nutritionally adequate, culturally appropriate, and safe food to combat malnutrition will need to be adopted according to the specific context.¹²⁵

Notably, the Committee has emphasized that health should be understood holistically, encompassing both physical and mental health. The Committee requires States to provide adequate treatment and rehabilitation for children with mental health and psychosocial disorders.¹²⁶ In its CO to Belgium, the Committee expressed concern about the lack of psychological support and specialized mental health services for

¹¹⁸ John Tobin, 'Article 24 The Right to Health', page 919 + CRC/C/GC/15, paras 25, 113-114.

¹¹⁹ CRC/GC/6, para 46.

¹²⁰ CRC/C/GC/15, para 8.

¹²¹ Ibid para 115.

¹²² Ibid para 24 + 116.

¹²³ CRC/GC/6, para 47.

¹²⁴ CRC/C/GC/26, para 38.

¹²⁵ CRC/C/GC/15, para 43.

¹²⁶ Ibid para 39.

refugee and migrant children.¹²⁷ Additionally, for Norway, the Committee required the enabling of adequate psychological and psychiatric care for traumatized asylum-seeking children.¹²⁸

Even in times of crisis or limited resources, the State is required to maintain at least the minimum core content of the right to health, which includes access to essential medicines and basic mental health support, particularly for vulnerable groups such as asylum-seeking children, providing an adequate response to the underlying determinants of children's health.¹²⁹

3.4.3. Concluding remarks

The RCD and the CRC show significant alignment in their recognition of mental health as a fundamental component of well-being, particularly in the context of asylum-seeking children. Both instruments acknowledge the specific vulnerabilities and psychological needs that may arise from trauma, displacement, and instability. Each framework includes a minimum core obligation that must be guaranteed under all circumstances.

However, the CRC offers a more expansive and detailed framework. It enshrines the right of the child to enjoy the highest attainable standard of health and to live in conditions that support this goal, including access to services that promote health and well-being. The Committee has further clarified that this entails the establishment of well-functioning referral systems, an especially critical requirement in the context of asylum reception centers. The CRC also emphasizes related aspects of health, such as adequate sanitation and access to food. Moreover, the Committee specified that all health-related services, facilities, and goods be designed and implemented in a way that respects medical ethics and considers children's cultural backgrounds, views, and languages.

While the CRC requires immediate access to health services, the RCD does not establish such a timeframe for such access, leaving room for delayed access in practice.

3.5. The Right to an Adequate Standard of Living

3.5.1. The Right to an Adequate Standard of Living under the RCD

The Reception Conditions Directive (RCD) recognizes the right of all applicants for international protection, including children, to an adequate standard of living.

Under the 2013 RCD, Article 17(2) obliges Member States to ensure that material reception conditions provide an adequate standard of living for all applicants. The same is specified under Article 19(2) of the 2024 Directive. Both emphasize that this standard must factor in the specific situation of vulnerable persons, including children, as defined in Article 21 2013 RCD and 20(1) 2024 RCD. Additionally, the child-specific provisions of Articles 23(1) 2013 Directive and 26(1) 2024 RCD require that Member States ensure an adequate standard of living specifically for minors, one that supports their physical, mental, spiritual, moral,

¹²⁷ UN CRC, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Belgium' (28 February 2019) UN doc CRC/C/BEL/CO/5-6, para 32(d).

¹²⁸ UN CRC, 'Concluding Observations on Norway' (21 September 2005) UN doc CRC/C/15/Add.263, para. 42.

¹²⁹ CRC/C/GC/15, para 73.

and social development. Recital 11 of the 2013 RCD affirms that the objective of reception standards is to ensure applicants enjoy dignified living conditions and that such conditions are comparable across the Member States.

Recital 58 2024 RCD introduces a new consideration, stating that language skills should be considered when determining what constitutes an adequate standard of living. Article 19(1) of the 2024 Directive maintains the obligation to provide material reception conditions from the moment an application for international protection is submitted.

The 2013 RCD laid a solid foundation for the right to an adequate standard of living by integrating this right into both general and child-specific provisions. The 2024 RCD retains these foundational guarantees while clarifying clarifies and strengthening them. It introduces new factors, such as language proficiency.

3.5.2. The Right to an Adequate Standard of Living under the CRC Framework

The right to an adequate standard of living is recognized across a range of international and regional human rights instruments.¹³⁰ Under the CRC, however, this right is articulated from a child-specific perspective.¹³¹

As with other CRC provisions, the right to an adequate standard of living is closely linked with the realization of other rights. It has been argued that without an adequate standard of living, a child's health will inevitably be compromised.¹³² It also underpins children's rights to survival and development under Article 6, social security under Article 26, and parental support under Article 18.¹³³ The Committee has adopted a "cluster approach" in its reporting guidelines and concluding observations, recognizing the interdependence and indivisibility of these rights.¹³⁴

Article 27 CRC outlines the core components of the right to an adequate standard of living, including food, clothing, housing, access to social programs, and state assistance, and child support. Importantly, it recognizes the dual role of parents and the State in ensuring the realization of this right. Parents or caregivers are primarily responsible for securing a child's standard of living but States must provide support where necessary.¹³⁵ This includes taking appropriate measures to assist parents and, where relevant, to

¹³⁰ See for example Article 11 ICESCR + Catherine S Taylor, 'Children's Right to an Adequate Standard of Living' (2002) 22 *Children's Legal Rights Journal* 17, page 18.

¹³¹ Aoife Nolan, 'Article 27 The Right to a Standard of Living Adequate for the Child's Development' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019), page 1023.

¹³² John Tobin, 'Article 24 The Right to Health', page 906.

¹³³ Aoife Nolan, 'Article 27 The Right to a Standard of Living Adequate for the Child's Development', page 1026.

¹³⁴ For example, UN CRC, '*Concluding Observations: Lithuania*' (17 January 2001) UN doc CRC/C/15/Add.146, para 42, which talks about the connection between the right to an adequate standard of living and the child's right to survival and development.

¹³⁵ This requirement for states is also stated in CMW/C/GC/4-CRC/C/GC/23, para 49.

recover maintenance from parents who hold financial responsibility.¹³⁶ In the context of families residing in asylum centers, it can be reasonably assumed that the State must step in to provide support, as parents in such situations are often unable to obtain employment or generate income immediately, if at all. Consequently, they may lack the means to choose or provide suitable housing, clothing, and food for their children, underscoring the State's role in fulfilling this right under Article 27 CRC.

The overarching aim of Article 27 is to ensure a standard of living adequate for the child's physical, mental, spiritual, moral, and social development, for asylum-seeking children.¹³⁷ This list of features will inevitably vary within and between States and among children based on the impact of personal attributes such as their gender, religion, cultural identity, and physical and mental abilities. Moreover, the identification of these features must entail a degree of collaboration between States and other actors, including parents, professionals working with children, and children themselves, consistent with Article 12. In this sense, the concept of the child's standard of living, which corresponds to a necessarily flexible understanding of child development, should be seen as a reasonably accommodating term. That said, it is still possible to identify some of the core elements or features of the child's standard of living that are necessary to ensure their development.¹³⁸ Ultimately, adequacy is assessed by the extent to which the conditions provided enable a child's full and optimal development. Thus, Article 27 can be interpreted as entitling children to the resources and conditions necessary to become fully capable, independent, and well-functioning individuals.¹³⁹

Given the Committee's embrace of the typology previously explained, Article 27 can be understood as imposing obligations on States not to interfere directly or indirectly with the enjoyment of the right to an adequate standard of living, including its constituent elements.¹⁴⁰

Article 27 is classified as an economic and social right under the Convention like the two previous provisions. It is therefore governed by the second sentence of Article 4, which states that, concerning economic, social, and cultural rights, States Parties must undertake measures "to the maximum extent of their available resources and, where needed, within the framework of international cooperation."¹⁴¹

Unlike the right to health, for which the Committee has identified some core obligations, the Committee has not yet delineated the minimum core obligations under Article 27.¹⁴²

¹³⁶ Aoife Nolan, 'Article 27 The Right to a Standard of Living Adequate for the Child's Development', page 1023.

¹³⁷ Ibid pp 1023-1024. See also CRC/GC/6, para 44 + CRC/C/GC/22-CMW/C/GC/3, para 43.

¹³⁸ Aoife Nolan, 'Article 27 The Right to a Standard of Living Adequate for the Child's Development', page 1028.

¹³⁹ Ibid page 1036.

¹⁴⁰ UN CRC, *General Comment No. 19 (2016) on Public Budgeting for the Realization of Children's Rights* UN doc CRC/C/GC/19, para 27(a).

¹⁴¹ Aoife Nolan, 'Article 27 The Right to a Standard of Living Adequate for the Child's Development', page 1039.

¹⁴² Ibid page 1039.

States parties should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families. States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities.¹⁴³

3.5.3. Concluding remarks

Both the RCD and the CRC recognize the child's development as central to achieving an adequate standard of living. While the RCD refers broadly to the obligation to guarantee a "dignified standard of living," the CRC offers a more detailed vision framing the right to an adequate standard of living as instrumental in enabling the child to become a fully capable, independent, and well-functioning member of society.

Unlike the RCD, which does not define what constitutes an adequate standard of living, the CRC explicitly identifies its components, including adequate housing, nutrition, and clothing. Furthermore, the CRC recognizes the role of the family and the evolving capacities of the child, placing primary responsibility for the child's upbringing on parents or legal guardians. It also acknowledges the impact of a State's available resources on the realization of this right.

3.6. The Right to Rest, Leisure and Play

3.6.1. The Right to Rest, Leisure and Play under the RCD

The right to rest, leisure, and play is an essential component of a child's holistic development and is explicitly recognized in both the 2013 and 2024 versions of the Reception Conditions Directive.

Article 23(3) of the 2013 Directive and Article 26(3) of the 2024 RCD both provide that children shall have access to leisure activities, including play and recreational opportunities appropriate to their age. These activities must be made available within the premises and accommodation centers outlined in the respective provisions. They ensure that children, regardless of their asylum status, are given opportunities for leisure within the environment in which they are hosted.

3.6.2. The Right to Rest, Leisure and Play under the CRC Framework

Although Article 31 CRC has not historically received the same degree of attention as other rights in the Convention, the elements it enshrines have intrinsic value and worth.¹⁴⁴ Their realization is fundamental to children's health, well-being, and development, and they also contribute to the fulfillment of other rights, such as the right to education. Indeed, play has been recognized as a vital mechanism through which children learn and develop cognitively, emotionally, and socially.¹⁴⁵ Accordingly, the Committee stated that play, recreation, rest, leisure, and cultural life are not optional extras rather they serve 'to enrich the lives of

¹⁴³ CMW/C/GC/4-CRC/C/GC/23, para 50.

¹⁴⁴ Sophie McNeill, 'Article 31 of the CRC – The Right to Play, Rest and Leisure: A Forgotten Right for Children?' (2020) 10 *King's Student Law Review* 2, page 2 + UN CRC, *General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play and Culture (Art. 31)* UN doc CRC/C/GC/17, para 33.

¹⁴⁵ Gerison Lansdown and John Tobin, 'Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019), page 1198 + CRC/C/GC/17, para 9.

children;’ they describe conditions necessary to protect the unique and evolving nature of childhood’ and ‘[t]heir realization is fundamental to children’s entitlement to optimum development ... [,] the promotion of resilience and to the realization of other rights’.¹⁴⁶ Additionally, the provision must be understood holistically, meaning that every element within is mutually linked and reinforcing.¹⁴⁷

The right to rest, as outlined in Article 31, is not explicitly linked to work in the CRC, unlike in other international instruments.¹⁴⁸ The Committee has clarified that rest goes beyond mere respite from physical or mental activity and should be understood as encompassing the right to adequate sleep. This understanding reflects the impact of poor or insufficient sleep on a child’s overall well-being, development, and ability to participate meaningfully in various aspects of life, including learning and social interaction.¹⁴⁹

Leisure is defined as free or unobligated time in which play or recreation can occur.¹⁵⁰ Recreation encompasses a wide range of activities, including participation in music, art, sports, and games.¹⁵¹ It excludes time spent in formal education, work, domestic duties, or other activities essential to life.¹⁵² Leisure can thus be characterized as a time and space without any obligations and the presence of choice, enabling children to engage in self-selected, enjoyable activities at their own pace as actively or inactively as they wish. Notably, neither the text of Article 31 nor the Committee guides the amount of leisure time to which children are entitled.¹⁵³

Play is defined by the Committee as any behavior, activity, or process initiated, controlled, and structured by children themselves.¹⁵⁴ Play is considered crucial to children’s development as it fosters the ability to negotiate, restore emotional balance, resolve conflicts, and make independent decisions. All in all, children can gain skills that enhance their ability to assume constructive roles in society.¹⁵⁵ For children in asylum

¹⁴⁶ CRC/C/GC/17, para 8 + CRC/C/GC/26, para 59.

¹⁴⁷ CRC/C/GC/17, para 8.

¹⁴⁸ See for example UNGA, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III) Article 24 + ICESCR Article 7.

¹⁴⁹ Gerison Lansdown and John Tobin, ‘Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts’, page 1201 + CRC/C/GC/17, para 14(a).

¹⁵⁰ CRC/C/GC/17, para 14 (b).

¹⁵¹ Ibid para 14(d).

¹⁵² Ibid para 14 (b).

¹⁵³ Gerison Lansdown and John Tobin, ‘Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts’, page 1203.

¹⁵⁴ CRC/C/GC/17, para 14(c).

¹⁵⁵ Ibid para 9.

procedures, whose childhoods are often marked by instability and uncertainty, these developmental benefits are particularly significant.

Article 31 imposes three obligations on States parties to guarantee that every child realizes the rights without discrimination. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, in the enjoyment of the rights provided for in Article 31. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the rights under Article 31. The obligation to fulfil requires States parties to introduce the necessary legislative, administrative, judicial, budgetary, promotional, and other measures aimed at facilitating the full enjoyment of the rights provided for in Article 31 by undertaking action to make available all necessary services, provisions, and opportunities.¹⁵⁶

While the Committee does not explicitly adopt the “4 As” framework in its GC on Article 31, the principles underpinning this approach are clearly reflected in its interpretation.¹⁵⁷ Availability implies that children should be entitled to opportunities to participate in play, leisure, rest, cultural life, and the arts. Accessibility requires that these activities be free from discrimination and physically, economically, and informatively accessible.¹⁵⁸ For example, all children should be able to enjoy the rights under Article 31, regardless of where they live, including asylum reception centers.¹⁵⁹ The principle of acceptability requires that activities be suitable for children and their parents or guardians, taking into account factors such as the child’s age, gender, ability, and religious and cultural background. Adaptability, or quality, means that activities must be appropriate in standard, ensuring that children’s experiences are positive and do not cause harm. This includes the provision of suitable materials and the involvement of trained and qualified personnel.¹⁶⁰

Although Article 31 does not quantify the time or define the specific form that rest, leisure, and play must take, the Committee has made it clear that States Parties must take reasonable measures within their available resources to support the enjoyment of these rights.¹⁶¹ While acknowledging that the realization of Article 31 may be subject to resource availability, the Committee also stresses that States must strive to achieve the widest possible enjoyment of these rights under prevailing circumstances. Regressive measures are only permissible where fully justified and proportionate to the consideration of other rights in the Convention.¹⁶²

¹⁵⁶ Sophie McNeill, ‘Article 31 of the CRC - The Right to Play, Rest and Leisure: A Forgotten Right for Children?’, page 5 + CRC/C/GC/17, para 54.

¹⁵⁷ See CRC/C/GC/17, para 58(f).

¹⁵⁸ Gerison Lansdown and John Tobin, ‘Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts’, page 1212.

¹⁵⁹ CRC/C/GC/17, para 5.

¹⁶⁰ Gerison Lansdown and John Tobin, ‘Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts’, page 1212.

¹⁶¹ Ibid page 1199.

¹⁶² Ibid page 1215.

Importantly, many aspects of Article 31 require minimal financial investment. Children often need only an enabling environment, some imagination, and a few inexpensive materials, such as a skipping rope, a ball, or art supplies, to engage in play and recreation.¹⁶³ The central obligation of states, then, is to create an environment that facilitates the enjoyment of these rights. This includes addressing and transforming social attitudes and practices that inhibit children's capacity to rest, play, and participate freely in cultural life.¹⁶⁴

Such an environment is especially vital in asylum reception centers, where children, whether accompanied or unaccompanied, often experience isolation, stress, and uncertainty while awaiting the outcome of their asylum procedures. Opportunities for play and recreation in these settings can enhance resilience, promote physical and emotional health, and support a sense of normalcy.¹⁶⁵

It was stressed that asylum-seeking children face profound challenges in realizing their rights under Article 31 as they often experience both dislocation from their traditions and culture and exclusion from the culture of the host country. Efforts thus must be made to ensure that refugee and asylum-seeking children have equal opportunities with children from the host country to enjoy the rights provided for in Article 31. Recognition must also be afforded to the right of refugee children to preserve and practice their own recreational, cultural, and artistic traditions.¹⁶⁶

In all cases, activities under Article 31 must be age-appropriate, aligned with the best interests of the child, and designed to minimize any risk of harm or injury.¹⁶⁷ In the Co to Belgium, the Committee recommended that the State strengthen efforts to guarantee the right of all children, including refugee and migrant children, to rest, leisure, and sufficient time for safe, accessible, inclusive, and age-appropriate play and recreational activities.¹⁶⁸ Similarly to Sweden, the Committee urged the State to ensure that sports, leisure, cultural, and artistic activities are available, safe, and accessible to asylum-seeking children and migrant children more generally.¹⁶⁹

3.6.3. Concluding Remarks

The CRC offers a significantly more comprehensive articulation of State obligations concerning children's rights to rest, leisure, and play when compared to the RCD. Whereas the RCD merely references the

¹⁶³ Gerison Lansdown and John Tobin, 'Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts', page 1216.

¹⁶⁴ Ibid page 1199.

¹⁶⁵ Sophie McNeill, 'Article 31 of the CRC - The Right to Play, Rest and Leisure: A Forgotten Right for Children?', page 16.

¹⁶⁶ CRC/C/GC/17, para 23.

¹⁶⁷ Gerison Lansdown and John Tobin, 'Article 31 The Right to Rest, Leisure, Play, Recreation, and Participation in Cultural Life and the Arts', page 1209.

¹⁶⁸ CRC/C/BEL/CO/5-6, para 32(d).

¹⁶⁹ *UN CRC, Concluding observations on the Sixth Periodic Report of Sweden, CRC/C/SWE/CO/6* (6 March 2023), para 41(a).

provision of leisure activities, the CRC affirms the intrinsic value of rest, leisure, and play as essential components of a child's well-being. It further emphasizes their interdependence with other fundamental rights, including education and holistic development. The Committee has explicitly stated that rest and leisure are just as vital to a child's development as adequate nutrition, housing, health care, and education.¹⁷⁰

In contrast, the RCD takes a more limited and functionalist approach. It restricts its scope to the availability of leisure activities within reception centers without acknowledging whether children may already be engaging in such activities through other avenues, such as school. However, the CRC goes further by emphasizing the importance of ensuring physical access to these activities, regardless of the child's location.

Crucially, the RCD does not mention the child's right to rest, omitting a core element recognized under Article 31 CRC. The RCD also lacks an explicit reference to the principle of non-discrimination in the context of leisure and play, a key normative element central to the CRC. Furthermore, neither instrument specifies the minimum time that should be allocated for play and recreational activities.

3.7. Concluding Remarks Chapter Three

This chapter has demonstrated that while both the CRC and the RCD address the rights of asylum-seeking children in reception contexts, the CRC provides a more comprehensive, detailed, and child-centered framework. For example, in matters such as the transfer of children between facilities, the CRC requires the application of the child's right to be heard and the principle of the best interests of the child safeguards not articulated enough within the RCD.

The CRC not only articulates the substantive rights of children, such as education, healthcare, an adequate standard of living, and play but also defines the procedural and normative environment in which these rights must be fulfilled. It incorporates cross-cutting principles, such as non-discrimination, child participation, the requirement of immediate access to rights, the prohibition of retrogressive measures, the interdependence of rights, and holistic development. By contrast, the RCD adopts a more functional and, at times, minimalistic approach, providing only limited or vague guarantees. It omits critical rights, such as the right to rest and be heard, and protections against discrimination, and it does not integrate the interrelated nature of children's rights into its design or implementation.

Importantly, the CRC underscores that children's rights must always be upheld and that they are not standalone but mutually reinforcing, requiring holistic implementation strategies that consider their interconnection. While resource availability is recognized as a limiting factor under the CRC, this limitation cannot be used as a blanket justification for inaction, especially by middle- and high-income countries such as those within the EU.¹⁷¹

Despite this, many Member States continue to restrict the full realization of socio-economic rights for asylum-seeking children, often citing budgetary constraints. Such practices raise serious concerns about

¹⁷⁰ CRC/C/GC/17, para 13.

¹⁷¹ Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 444.

the consistency of EU asylum reception frameworks with international human rights obligations.¹⁷² Therefore, aligning the RCD more closely with the CRC is not only desirable but necessary to ensure that the rights of all children, regardless of their legal status, are respected, protected, and fulfilled.

¹⁷² Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 444.

4. ANALYSIS OF DUTCH ASYLUM RECEPTION CENTERS

This chapter critically examines the extent to which the Netherlands complies with its obligations under the RCD and CRC, both in law and practice. It addresses the sub-questions: How do Dutch legal standards and reception practices uphold the child-specific obligations under the RCD and CRC?

Notably, under international law, States must fulfil their obligations under treaties they have ratified, including binding decisions of recognized international bodies.¹⁷³ The Netherlands, a monist State, integrates international treaties directly into its domestic legal system. Treaties like the CRC, which was ratified on March 8, 1995, require no separate legislative approval, and supersede conflicting domestic law upon publication, as outlined in Articles 93 and 94 of the Dutch Constitution.¹⁷⁴ However, only the self-executing provisions of international treaties are considered to have direct effect in the Dutch legal order. According to the Dutch Supreme Court, for a treaty provision to be self-executing, it must be of such a nature that it can be directly applied in the national legal order, i.e., it must be unconditional and sufficiently precise in the results it aims to achieve. Therefore, not all provisions of the CRC automatically have direct effect in Dutch law; only those deemed self-executing do. The CRC is partially implemented through various Dutch regulations, as there is no single comprehensive act covering its entirety. Provisions of the RDC are partially implemented nationally through the Regulation on Benefits for Asylum Applicants and Other Categories of Foreigners (RVA), which refers explicitly to the 2013 RCD in its preamble.¹⁷⁵ Only other relevant national legislation that implements or mirrors the content of the CRC and RCD will be discussed.

4.1. The Dutch Asylum Reception System

The Central Agency for the Reception of Asylum Seekers (COA) has been responsible for asylum reception in the Netherlands since 1994. Under Article 3(1a) of the Aliens Act, the COA is legally responsible for the provision of both material and immaterial care of asylum seekers.¹⁷⁶ Reception centers are defined in Article 1 of the Act as a facility that is neither a private residence, hotel, nor guesthouse where the COA provides accommodation. Article 10 RVA outlines the grounds for restricting or, in exceptional cases, withdrawing reception conditions, all of which are based on the behavior of the asylum seeker.

According to Article 9(11) RVA, staff working in reception centers must receive appropriate training. Additionally, those engaging with unaccompanied minors must receive specialized education on their specific needs and continue to follow such training. This requirement is consistent with Article 29(8) of the 2013 RCD.

Article 18(a) RVA elaborates that the COA must consider the specific situation of vulnerable persons as outlined in Article 21 2013 RCD. Under the same Article, the COA is responsible for assessing whether an applicant has special reception needs. Where such needs are identified, additional care and tailored support

¹⁷³ Venice Commission, Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts (December 2014), page 2.

¹⁷⁴ Ibid page 3 + CBS, Jaarrapport Landelijke Jeugdmonitor 2021 <<https://longreads.cbs.nl/jeugdmonitor-2021/kinderrechten-in-nederland/>> last visited (16-06-2025).

¹⁷⁵ *Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005* (Rva 2005) Stcrt. 2005, 2.

¹⁷⁶ *Vreemdelingenwet 2000* (23 November 2000) Stb. 2000, 495.

must be provided. However, Article 18(4) mandates that the Minister may make exceptions to this requirement when housing is provided in private accommodations or alternative forms such as hotels.

The placement of unaccompanied minors depends on age and vulnerability. The foundation Nidos assigns children under 15 and vulnerable minors to foster families, while others over 15 are placed in small-scale COA facilities, specially made for unaccompanied children.¹⁷⁷ This chapter focuses only on children who are accompanied or unaccompanied minors over 15 who are not deemed vulnerable.

The definition of reception centers under Dutch legislation is narrower than the one presented by the RCD, which refers to private accommodations such as houses or apartments. Nonetheless, Dutch law does require adequate staff training, which is consistent with the standards set by both the RCD and the CRC. Similarly, the requirement to assess the special needs of children, especially unaccompanied children, reflects obligations under both instruments, as they emphasize the importance of tailoring reception conditions to the individual needs of each child. However, the allowance for exceptions to these provisions, particularly when alternative forms of accommodation are used, raises serious concerns. Such exceptions risk undermining the consistent application of safeguards and may jeopardize the rights and well-being of asylum-seeking children.

4.1.1. Non-regular Reception Centers

Since 2021, the Dutch asylum reception system has faced mounting pressure, resulting in what has been described as a crisis. While the rise in asylum applications is often cited as the primary cause, a more comprehensive analysis reveals structural and administrative shortcomings.¹⁷⁸ The Netherlands Institute for Public Safety concluded that the situation is less an asylum crisis and more a policy crisis.¹⁷⁹ The Court of Appeal reinforced this view, ruling that the government was responsible for dismantling reception infrastructure since 2016.¹⁸⁰

The Court also rejected the argument that the reception shortage constituted a temporary emergency, emphasizing that a government-created crisis cannot justify lowering reception standards under Article 18(9) RCD. This article only allows for reduced reception conditions in genuinely exceptional and temporary situations, not when the crisis is foreseeable and the result of policy choices.¹⁸¹ As a result, the current crisis

¹⁷⁷ See Article 18(C) RVA + Marcelle Reneman, 'Alleenstaande minderjarigen verdwijnen uit de opvang' (11 June 2019) <<https://verblijfblog.nl/alleenstaande-minderjarigen-verdwijnen-uit-de-opvang/>> last visited (16-06-2025).

¹⁷⁸ EUAA, Asylum Report 2024, pp. 134 + 137, + VWN and UNHCR, Asielopvang Nieuwe Stijl: Position Paper (July 2022) <<https://www.unhcr.org/nl/media/asielopvang-nieuwe-stijl-position-paper-vluchtelingenwerk-en-unhcr-juli-2022-pdf>> last visited (16-06-2025), page 1.

¹⁷⁹ Kinderombudsman and nationale ombudsman, De crisis voorbij (27 June 2023) <<https://www.nationaleombudsman.nl/system/files/onderzoek/20230072%20De%20crisis%20voorbij.pdf>> last visited (16-06-2025), page 16.

¹⁸⁰ Gerechtshof Den Haag, ECLI:NL:GHDHA:2022:2429 (20 December 2022), para 9(8).

¹⁸¹ *Ibid.*

has not triggered the Dutch national emergency governance structure, unlike the situation in 2015. All responses must, therefore, fall within the regular legal and administrative framework for asylum.¹⁸²

In practice, the IND routinely fails to decide asylum applications within the statutory six-month period required by Article 42(1) of the Dutch Aliens Act. Processing often takes two to three years.¹⁸³ This delay results in more applicants remaining in reception centers for extended periods. Another significant bottleneck is the lack of housing for recognized refugees. Without access to permanent housing, these individuals continue to occupy reception spaces, blocking spaces for new arrivals.¹⁸⁴ Additionally, the funding structure for both the IND and the COA is based on forecasted inflow and current occupancy levels. It does not allow for buffer capacity, making the system vulnerable to fluctuations and requiring costly and inefficient scaling up and down.¹⁸⁵

Due to these constraints, the COA has had to open emergency reception centers when regular shelters reach full capacity.¹⁸⁶ These are temporary facilities set up in cooperation with municipalities and are typically located in unconventional spaces such as sports halls, vacant offices, ships, or pavilions. Standards of care and facilities are usually lower than in regular asylum centers.¹⁸⁷

Unfortunately, the situation worsened with the increased number of arrivals from Afghanistan and the war in Ukraine.¹⁸⁸ In response, the government reintroduced crisis emergency reception centers (CNO).¹⁸⁹

¹⁸² VNG, Handreiking crisisnoodopvang (October 2021) <<https://vng.nl/sites/default/files/2021-10/handreiking-crisisnoodopvang.pdf>> last visited (29-06-2025), page 2.

¹⁸³ IND, 'Asiel en nareis: laatste ontwikkelingen' <<https://ind.nl/nl/asiel-en-nareis-laatste-ontwikkelingen>> last visited (16-06-2025).

¹⁸⁴ COA, Jaarverslag 2022 – Een veranderende wereld <<https://www.coa.nl/nl/verhaal/crisis-ter-apel>> last visited (16-06-2025).

¹⁸⁵ Raad Openbaar Bestuur, De opvang van asielzoekers moet niet als crisis, maar als maatschappelijke opgave worden aangepakt, (14 June 2022) <<https://www.raadopenbaarbestuur.nl/actueel/nieuws/2022/06/14/advies-de-asielopvang-uit-de-crisis>> last visited (16-06-2025).

¹⁸⁶ COA, Jaarverslag 2023 – Kerncijfers 2023, Van tijdelijk naar stabiel: nodig en mogelijk <https://coa.h5mag.com/jaarverslag_2023/kerncijfers_2023> last visited (16-06-2025), page 3.

¹⁸⁷ Ministerie van Justitie en Veiligheid, Handreiking Tijdelijke Spoedopvang (20 May 2024) <<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://open.overheid.nl/documenten/dpc-fb9b51597f4f5dc6c39ddf64f5cb94ab600929e8/pdf>> last visited (29-06-2025), page 25.

¹⁸⁸ COA, Jaarverslag 2022 – Een veranderende wereld.

¹⁸⁹ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023 (June 2023) <https://doktersvandewereld.org/uploads/documents/Rapport-crisisnoodopvang-juni-2023_2023-06-19-145504_mixe.pdf?v=1687186504> last visited (16-06-2025), page 6.

These centers are activated when the COA can no longer meet its legal duty to provide reception to all asylum seekers. The goal is to avoid situations where people are left to sleep outdoors.¹⁹⁰

CNOs are meant to be short-term, typically for no more than seven days, and may only be used when both regular and emergency facilities are at full capacity.¹⁹¹ Local mayors have the authority to open a CNO under Articles 172 and 175 of the Dutch Municipalities Act if there is an immediate threat to public order, such as the risk of mass homelessness.¹⁹²

In 2023, COA took over the coordination role of CNOs from regional safety authorities. Some CNO locations were upgraded to emergency shelters and are now operated by COA. Others remained under municipal control and are referred to as Temporary Municipal Reception locations (TGO). These are governed by agreements between COA and municipalities based on Article 3b of the COA Act, introduced through the Dispersal Act.¹⁹³ Municipalities are responsible for daily operations, often in collaboration with external partners, while the COA provides support.¹⁹⁴

The Guidelines for Crisis Emergency Reception developed to assist municipalities states that CNOs are not allowed to house vulnerable individuals, such as children under one year of age or unaccompanied minors.¹⁹⁵ However, these groups are often accommodated there due to the lack of alternatives. Although the Court emphasized that this is a non-binding tool and thus does not confer legal rights on asylum seekers, it prohibited the State and COA from placing vulnerable asylum seekers in emergency or crisis reception centers unless their specific needs can be met in those locations.¹⁹⁶

Municipalities place conditions on who they want to be sheltered in CNOs, often preferring families, and excluding single men. It is said that the reason for this preference stems from the necessity to create a calm and safe atmosphere. Therefore, vulnerable groups such as unaccompanied minors are still frequently housed there.¹⁹⁷

¹⁹⁰ VNG, Handreiking crisisnoodopvang, page 25.

¹⁹¹ Ibid.

¹⁹² Ibid pp 25-26.

¹⁹³ Wet van 1 januari 2024 tot wijziging van de Vreemdelingenwet 2000 in verband met de spreading van asielzoekers (Spreidingswet) [2024] Stb. 2024/XX.

¹⁹⁴ VNG, Handreiking crisisnoodopvang, page 26.

¹⁹⁵ Ibid, page 9.

¹⁹⁶ Gerechtshof Den Haag, para 10(3).

¹⁹⁷ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 18.

4.2. Transfers of Children

In the Netherlands, the legal framework governing the transfer of asylum seekers is primarily outlined in the Central Agency for the Reception of Asylum Seekers Act.¹⁹⁸ According to Article 11 RVA, transfers are only permitted when strictly necessary. This principle is reflected in the COA Act, which stipulates under Article 3(a) that transfers are only considered necessary when:

- (a) The reception facility is being closed.
- (b) Transfer serves the efficient and effective implementation of the asylum procedure.

Following a transfer, the provisions are offered at this other facility. Moreover, in exercising this process, the COA must uphold the consent of the asylum seekers and, as far as possible, ensure that the unity of the family is preserved.

While these provisions do demonstrate a concern for maintaining service continuity and family unity, they fall short of the standards set out in the RCD and CRC. The Dutch framework currently does not include an explicit legal obligation to hear children prior to transfer, nor does it incorporate a formal best interests' assessment for relocation decisions.

In practice, many asylum seekers, including children, need to move many times since nonregular reception centres are closed or because new ones are established. For children, this has a significant impact, as they must say goodbye repeatedly to their friends, their representatives at the reception center, and everything that was somewhat familiar. It is reported that children are rarely prepared for these moves, which increases their risk of psychosocial problems and shows that their views are not being respected.¹⁹⁹

Thus, while the Dutch legal framework nominally restricts unnecessary transfers and attempts to preserve family units, it does not sufficiently address the rights and developmental needs of these children. Frequent, poorly managed relocations violate key principles of both the CRC and the RCD. Moreover, to meet the enhanced child-specific obligation under the 2024 RCD, specifically the best interest assessment, and ensure compliance with the CRC, the Netherlands must revise its national legislation and significantly improve its practical procedures for the transfer of asylum-seeking children. Moreover, it must include a mechanism for rectifying the decision, as the CRC requires. The only option now is to file a complaint, but the decision of reallocation is not a possible topic.²⁰⁰

4.3. Education

In the Netherlands, the right to education is legally enshrined in both constitutional and statutory law. Article 23(4) of the Dutch Constitution ensures that public primary education is sufficiently available in each municipality.²⁰¹ This includes access for all children residing in the Netherlands, regardless of legal status.

¹⁹⁸ *Wet Centraal Orgaan opvang asielzoekers* (7 October 1994) Stb. 1994, 780.

¹⁹⁹ Kinderombudsman and nationale ombudsman, *De crisis voorbij*, page 19.

²⁰⁰ COA, COA Klachtenregeling <<https://www.coa.nl/nl/coa-klachtenregeling>> last visited (29-06-2025).

²⁰¹ *Grondwet voor het Koninkrijk der Nederlanden* (17 February 1983, as amended).

Moreover, under Article 3 of the Compulsory Education Act, children are subject to compulsory education from the age of 5 until they have completed twelve whole years of schooling or until they reach the age of 16.²⁰² Article 4(b) of the Act extends this obligation through a ‘qualification duty, requiring children aged 16 and 17 to remain in education until they attain a specific type of degree. These obligations apply to all children in the Netherlands, including those seeking asylum.

The Primary Education Law (PEL) and the 2020 Secondary Education Law (SEL) both contain specific provisions for so-called ‘newcomers’ (Nieuwkomers).²⁰³ These provisions were introduced with the Temporary Act on Temporary Newcomer Provisions in Education.²⁰⁴ Newcomers are children who have been in the Netherlands for less than four years and do not yet speak sufficient Dutch.²⁰⁵ These children may be placed in a temporary newcomer’s facility, where the education program is tailored to facilitate rapid integration into the regular school system.²⁰⁶ Under Article 9(3g) of the SEL, these programs are limited to a maximum of two years. They must focus on core subjects, including Dutch language, mathematics, physical education, and social-emotional well-being. Similar provisions apply under Articles 193(g and i) PEL.

The RVA reinforces this framework. Article 9(3d) requires COA to ensure that asylum seekers are offered an educational and developmental program while in reception facilities. Furthermore, a specific regulation provides municipalities with financial resources to support the organization and delivery of primary education to children in asylum centers.²⁰⁷

Dutch national legislation appears broadly aligned with the standards set out in the RCD. However, the 2024 recast of the Directive introduces enhanced obligations, most notably, the requirement that asylum-seeking children must not be placed outside the general education system and must have access to the same education as national children. Dutch law does not yet fully reflect this standard. In addition, it fails to incorporate key elements of Article 29 of the CRC, which outlines the objectives of education. These include promoting of non-discrimination, respecting cultural diversity, and responding to the specific needs of vulnerable children. Moreover, the right to education under the CRC requires immediate access to education. For full compliance with both the CRC and the revised RCD, Dutch law should be updated to recognize the vulnerabilities of asylum-seeking children explicitly and embed corresponding safeguards.

²⁰² Leerplichtwet 1969, Stb. 1969, 464 (Netherlands), as amended.

²⁰³ *Wet op het primair onderwijs* (WPO), Stb. 1981, 680 + *Wet op het voortgezet onderwijs* (WVO), Stb. 1963, 285.

²⁰⁴ *Tijdelijke wet tijdelijke nieuwkomersvoorzieningen in het onderwijs*, Stb. 2023, 274.

²⁰⁵ See Articles 193(a-b) PEL and 9(3a-b) SEL for the definition of newcomers.

²⁰⁶ See Articles 193(g) PEL and 9(3i(2a) SEL.

²⁰⁷ The regulation is called the Education Housing Budgets (*Onderwijshuisvestingsbudgetten voor Asielzoekerskinderen*).

4.3.1. Practical Situation

Despite these legal protections, asylum-seeking children in the Netherlands face significant barriers to accessing education. Frequent relocations make it challenging for professionals to keep track of children and ensure consistent access to schools.²⁰⁸ Moreover, children need to say goodbye to their teachers.²⁰⁹ Relocations also disrupt learning continuity, making it impossible to maintain a stable educational trajectory.²¹⁰

Many asylum-seeking children within CNOs only attend school partially, not at all, or only after a significant time.²¹¹ When no access is available, non-regular reception centers attempt to offer substitute activities that resemble education. These, however, do not meet the standards required under the right to education, especially for children over the age of twelve, who are often left with no suitable alternatives.²¹² Discrepancies also exist within families, as some children attend school while their siblings do not, which creates confusion and frustration for parents and contributes to a sense of unfairness.²¹³

Access to education thus varies greatly depending on the specific location of the shelter, the number of children present, and local school capacity. Some shelters collaborate with mainstream schools or International Transition Classes, while others employ temporary teachers for on-site classes.²¹⁴ The national shortage of qualified teachers, particularly in newcomer education, has worsened due to the additional strain from the arrival of Ukrainian refugees.²¹⁵

A study covering twelve emergency reception centers revealed significant variation: six ensured school access within three months, two achieved it after three months, and four only provided primary education, with no access to secondary education.²¹⁶ These disparities highlight the randomness of access to education, which depends on factors beyond the child's control, such as age and location.

²⁰⁸ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 15.

²⁰⁹ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 19.

²¹⁰ Marjolein van der Kuil, 'Structuur, Steun en Stabiliteit' <<https://kind-in-azc.nl/wp-content/uploads/2025/01/Rapport-Structuur-Steun-en-Stabiliteit.pdf>> last visited (16-06-2025), page 30.

²¹¹ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 18.

²¹² Kinderombudsman and nationale ombudsman, De crisis voorbij, page 40.

²¹³ Ibid page 40 + Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 18.

²¹⁴ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 18.

²¹⁵ Arne van Huis, Arja Oomkens and Mirjam Zegers, Noodsituatie op noodlocaties <<https://kind-in-azc.nl/wp-content/uploads/2025/01/Quickscan-Noodsituatie-op-Noodlocaties.pdf>> last visited (16-06-2025), page 17.

²¹⁶ VWN, Gevlucht en Vergeten: Over de opvang van alleenreizende kinderen in Nederland (January 2024) https://www.vluchtelingenwerk.nl/sites/default/files/2024-01/vluchtelingenwerk_gevlucht_en_vergeten_januari2024.pdf last visited (16-06-2025), page 15.

This practical situation violates Article 16(2) RCD, which requires access to education within three months of application, and Article 28 of the CRC, which guarantees the right to education immediately. Moreover, it undermines that education under the CRC should be appropriate and non-discriminatory. While the court has acknowledged that a teacher shortage may justify some delay, it stressed that the State must continue to make reasonable efforts to ensure access to education for asylum-seeking children. It also stated that the State is not required to achieve the impossible but must demonstrate a sustained commitment to fulfilling its obligations.²¹⁷

Moreover, the absence of legal safeguards for children to challenge transfers or the lack of (adequate) schooling means their right to education is easily undermined. Without the ability to contest relocations that interrupt schooling or demand consistent educational access, children's rights remain inadequately protected. Therefore, the Dutch legal standards should indeed provide enough safeguarding for asylum-seeking children to prevent situations like these.

4.4. Health

In the Netherlands, the right to health for asylum seekers is embedded in both statutory regulations and policy measures. The key legislative instruments addressing this right are the RVA and the Dutch Constitution. Article 22 of the Dutch Constitution mentions that the government shall take measures to promote public health. Although this provision does not explicitly mention the right to health, it reinforces the State's responsibility to create an enabling environment for the health of all residents, including asylum seekers. Under Article 9(1) RVA, all individuals residing in an asylum reception facility are entitled to a defined set of provisions. Relevant for this section is the coverage of medical costs by a designated health insurance scheme.

Article 18(c) RVA mandates the COA to provide specialized care during residence in reception centers. Particularly, subparagraph (b) requires access to rehabilitation services and qualified support for minor asylum seekers who have experienced abuse, neglect, exploitation, torture, or the effects of armed conflict.

During the first two months, asylum seekers are entitled only to medically necessary care, regardless of whether they are housed in a regular center or (crisis) emergency shelter. The definition of medically necessary care is left to the judgment of the attending physician. After this initial period, they are, in principle, entitled to the same healthcare as Dutch citizens.²¹⁸

The Dutch legal framework is generally consistent with the 2013 RCD regarding the provision of emergency and essential healthcare, including trauma-related services for minors. However, to achieve full compliance with the enhanced obligations set out in the 2024 RCD, significant legal improvements are needed, particularly by stating that asylum-seeking minors have equal access to healthcare as national children.

Notably, the current framework lacks explicit safeguards to prevent healthcare discrimination against asylum-seeking. Additionally, it does not reflect the CRC's requirement to guarantee the highest attainable standard of health for every child. There is no explicit reference to a functional and inclusive referral system beyond the mention of an attending physician whose expertise in child or trauma care is not specified.

²¹⁷ *Gerechtshof den Haag*, para 15(8).

²¹⁸ *Dokters van de Wereld*, Rapport crisisnoodopvang juni 2023, page 6.

Moreover, the framework is silent on the need for healthcare services to be culturally appropriate and responsive to children's expectations, languages, and views, as required under the CRC. To close these gaps and ensure full compliance with the CRC and the 2024 RCD, Dutch legislation should be revised to include targeted legal safeguards for asylum-seeking children and clarify their entitlements within the broader national healthcare system.

4.4.1. Practical Situation

In general, regardless of the type of location, many asylum seekers are unfamiliar with the Dutch healthcare system, as they do not know what services are available or how the system works in general. This makes it difficult for them to adapt and navigate the system, which can cause additional stress and frustration on top of everything else.²¹⁹

Additionally, for residents of (crisis) emergency facilities, frequent relocations disrupt the continuity of care. Healthcare providers often lack information about a person's previous accommodation, medical history, or prior treatments. The absence of an integrated electronic health record system makes it difficult to track patient data across locations. In the Netherlands, every person should have a health record.²²⁰ This results in missed follow-ups, delays in treatment, or redundant procedures. Such inconsistencies are particularly harmful to vulnerable individuals, especially children, who require stability and continuous care.²²¹

The relocations of children also make it difficult for professionals in youth healthcare to have an overview of the children present at their location.²²² Therefore, youth health care intake procedures do not occur as intended, often due to capacity limitations or delays in registering new locations in the national system. Sometimes, entire families are processed at once to save time, which can result in reduced quality of assessments per child.²²³

Moreover, specialist care is rarely accessible in crisis or emergency shelters. Services such as specialist youth mental health care, speech therapy, or psychosocial support are already under strain in regular facilities. They are practically non-existent in non-regular reception locations. Professionals working in these environments report very few possibilities to refer children for secondary or specialist treatment.²²⁴

²¹⁹ Nederlands Jeugdinstituut, Vluchtelingenkinderen in de Kinderopvang: Achtergrondinformatie voor Pedagogisch Medewerkers (April 2021) <<https://www.nji.nl/system/files/2021-04/Achtergrond-vluchtelingenkinderen-Vluchtelingenkinderen-in-de-kinderopvang.pdf>> last visited (16-06-2025), page 14.

²²⁰ See Article 454(1) of the Dutch Civil Code, Book 7 + Rijksoverheid, Gegevens medisch dossier inzien, aanpassen of vernietigen <<https://www.rijksoverheid.nl/wetten-en-regelingen/productbeschrijvingen/gegevens-medisch-dossier-inzien-aanpassen-of-vernietigen>> last visited (29-06-2025).

²²¹ Dokters van de Wereld, Rapport crisisondopvang juni 2023, page 15.

²²² Ibid page 15.

²²³ Ibid page 22.

²²⁴ Arne van Huis, Arja Oomkens and Mirjam Zegers, Noodsituatie op noodlocaties, page 11.

The Asylum Seeker Healthcare Service helpline (GZA), which operates at both non-regular and regular facilities, is frequently unreachable due to long wait times. Further issues arise from austerity measures that have weakened intake procedures. One practitioner noted that the intake process now relies too heavily on parents to self-report medical needs.²²⁵ However, the lack of knowledge from the parents, combined with language barriers, results in many children being overlooked and having unmet healthcare needs.²²⁶

The Court itself stated that sufficient evidence was found showing that the State fails, in more than isolated cases, to meet Article 19 RCD.²²⁷ The medical care in crisis reception centers was often limited to emergency aid, and both physical and mental healthcare services were significantly restricted.²²⁸ Although the court declined to require universal medical screening before placement, it ordered the State and COA to make every reasonable effort to screen asylum seekers, especially before placement in emergency or crisis reception centers.²²⁹ The goal of these screenings is to assess whether the individual has specific needs that should guide the choice of reception facility.²³⁰

While the Netherlands has a broadly functioning healthcare system that includes asylum seekers, the rights of minor asylum seekers to health are not sufficiently protected in either law or practice. Frequent relocations, insufficient access to specialist services, inadequate screening, and the absence of legal safeguards undermine children's right to the highest attainable standard of health under the CRC. The Dutch framework does not reflect the specific vulnerabilities of children under the CRC and the 2024 RCD. As such, legal refinement is urgently needed to embed enforceable protections for asylum-seeking children, ensuring timely, continuous, and culturally appropriate care. The practical shortcomings of the system further reinforce the need for structural safeguards and accountability mechanisms to protect children's health as a fundamental right.

4.5. Adequate Standard of Living

The Dutch Constitution addresses the State's role in ensuring basic living conditions through social objectives. Article 20(3) provides that: "Residents of the Netherlands who are unable to provide for themselves have a right, to be regulated by law, to receive support from the government." Similarly, Article 22(2) states that: "Promotion of sufficient living accommodation is the concern of the authorities." However, these provisions establish a general duty for the State to act, they do not confer a justiciable right to housing, clothing, food, or material assistance.

The RVA offers limited guidance on guaranteeing of an adequate standard of living for asylum seekers. Article 14(1) specifies that: "The weekly financial allowance to be received by the asylum seeker, as referred

²²⁵ Arne van Huis, Arja Oomkens and Mirjam Zegers, *Noodsituatie op noodlocaties*, page 11.

²²⁶ *Ibid.*

²²⁷ Article 19(1) RCD mandates that applicants receive necessary healthcare, including, at a minimum, emergency care and essential treatment of illnesses and serious mental disorders.

²²⁸ *Gerechtshof Den Haag*, para 10(15).

²²⁹ *Ibid* decision.

²³⁰ *Ibid* para 13(8).

to in Article 9(1)(b) of this regulation, consists of an amount for food and an amount for clothing and other personal expenses.” Moreover, Article 14(8) RVA states that COA must provide meals in those locations where residents cannot prepare their own food.

While this provision ensures minimal financial support to cover essential daily needs and provides food, it falls short in several key respects. It does not refer to housing standards or access to hygiene products and omits broader rights set out in both the 2013 RCD and the CRC. These include essential principles such as human dignity, child development, well-being, the best interests of the child, and, critically for asylum-seeking children, the right to social inclusion and integration.

This legal gap is particularly significant when viewed through the lens of a child rights-based approach. Dutch law does not define what constitutes an “adequate standard of living” from the perspective of children’s rights, leaving the assessment to minimum financial metrics.

4.5.1. Practical Situation

Both physical isolation and poor infrastructure often undermine the adequacy of living conditions in (crisis) emergency shelters. Many facilities are located outside urban centers, making it nearly impossible for residents to leave without organized transportation.²³¹ In such cases, residents are dependent on staff for mobility, which creates a sense of confinement. Some compare their experience to being imprisoned, particularly when shelters are situated in remote fields.²³² Even when shelter staff are willing to help, services vary significantly from one location to another. In rare cases, bicycles or shuttle buses are provided, giving residents a limited degree of autonomy. Access to public transportation, such as free or subsidized travel cards, is not available in these shelters.²³³

Those housed in city centers generally report higher satisfaction due to proximity to public services and recreational opportunities, such as going to a gym or a public playground. Conversely, non-regular centers located in industrial zones, farmland, or isolated areas often evoke frustration, helplessness, and even despair.²³⁴

In visits to various (crisis) emergency centers, where residents live in tents, sports halls, warehouses, or converted office buildings, there are many problems, particularly regarding hygiene and sanitation. At some locations, a few toilets must serve hundreds of people, and the showers are often dirty, leading to unsanitary conditions.²³⁵ Some residents went on hunger strikes to change their situation. Additionally, some residents reported that staying in tents reminds them of bad memories from their past.²³⁶

²³¹ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 31.

²³² Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 14.

²³³ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 31.

²³⁴ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 14.

²³⁵ Ibid page 15.

²³⁶ Ibid page 14.

Privacy is another serious concern. In several emergency shelters, personal spaces are divided only by curtains or temporary partitions without doors or ceilings.²³⁷ At some sites, families share small cabins in large halls, and in at least two cases, those cabins lacked roofs due to fire safety concerns.²³⁸ In some cases, two families share a single partitioned space.²³⁹ Weekly inspections, thin walls, and a lack of lockable spaces further erode residents' sense of safety and dignity.²⁴⁰ Children have stated that they feel like anyone could walk in at all times.²⁴¹ Oftentimes children and adults are already suffering from trauma or emotional distress, which is only further exacerbated due to the situation. In addition to having no privacy, these shelters are often very noisy, with no real walls, doors, or ceilings.²⁴²

The quality and availability of food is another primary concern. Children who are unfamiliar with Dutch cuisine may struggle to eat, which can lead to malnutrition, weight loss, and poor health. Some children reportedly go to school hungry.²⁴³ Since most emergency shelters lack kitchens, families cannot prepare their own meals and receive no food allowance.²⁴⁴ Unlike regular asylum reception centers, which often include cooking facilities and food allowances, (crisis) emergency shelters offer little autonomy or flexibility.²⁴⁵ When there are no cooking facilities, all meals are centrally provided by COA at specific times, and in some facilities, residents are not allowed to serve themselves. Additionally, meal variety also varies significantly between shelters.²⁴⁶

Although the court has held that the mere absence of cooking facilities does not automatically violate the RVA or the RCD, it acknowledged that persistent issues with food quality, portion size, or suitability could constitute a breach if proven to be widespread.²⁴⁷

²³⁷ Arne van Huis, Arja Oomkens and Mirjam Zegers, Noodsituatie op noodlocaties, page 10.

²³⁸ Ibid.

²³⁹ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 30.

²⁴⁰ Ibid.

²⁴¹ Arne van Huis, Arja Oomkens and Mirjam Zegers, Noodsituatie op noodlocaties, page 10.

²⁴² Kinderombudsman and nationale ombudsman, De crisis voorbij, page 30.

²⁴³ Arne van Huis, Arja Oomkens and Mirjam Zegers, Noodsituatie op noodlocaties, page 13.

²⁴⁴ COA, 'Noodopvang: 'Het beste scenario is dat het niet meer noodzakelijk is'
<Noodopvang<https://www.coa.nl/nl/noodopvang-en-tijdelijke-gemeentelijke-opvang>> access (29-06-2025).

²⁴⁵ Ibid.

²⁴⁶ Kinderombudsman and nationale ombudsman, De crisis voorbij, page 30.

²⁴⁷ Gerechtshof Den Haag, para 10(9).

Parents in these shelters are often unable to support their children adequately, especially those who are coping with their mental health challenges.²⁴⁸ As they try to rebuild their lives in an unfamiliar environment, they may struggle with feelings of uncertainty and exhaustion. Some parents suffer from psychiatric conditions, which can hinder their capacity to care for and emotionally engage with their children.²⁴⁹ Therefore, parents are reliant on the State or the relevant third parties to support them when they are unable to do so.

These conditions do not meet the standards articulated in Article 27 CRC, which guarantees every child the right to a standard of living adequate for their physical, mental, spiritual, moral, and social development. Nor do they fulfill Article 17 and Article 18(3) of the RCD, which require Member States to provide material reception conditions that consider the specific situation of vulnerable applicants, including the best interests of the child.

What becomes clear is that Dutch law lacks the substantive and structural guarantees necessary to ensure that asylum-seeking children can enjoy their rights under these legal frameworks. The persistent gap between legal norms and actual living conditions demonstrates the urgent need for horizontal child-specific safeguards in national law. This includes clear, enforceable standards for housing, nutrition, hygiene, privacy, and autonomy, framed explicitly through the lens of children's rights, acknowledging their interdependences and the best interest's principle.

4.6. Rest, Leisure, and Play

Dutch law acknowledges the importance of play and recreational activities for asylum-seeking children. Article 18(c)(1a) RVA assigns the COA the responsibility to ensure that minors can participate in recreational and play activities appropriate to their age, including outdoor activities.

While this provision meets the basic requirements set out in the 2013 and 2024 RCD, it remains underdeveloped when compared to the more comprehensive standards established by Article 31 of the CRC.

Firstly, the right to rest is not mentioned, nor is it referred to as the right to adequate sleep. It also does not provide clarity on how the right to play should be practically and meaningfully fulfilled. Furthermore, the Dutch legislation does not incorporate the child's right to express their views on matters that affect them, including the content and organization of recreational activities. According to Article 31 of the CRC, play should be child-initiated, however, this is not safeguarded in national law.

Additionally, although the RVA refers to age-appropriate activities, it omits references to children's capacities, vulnerabilities, or cultural and religious backgrounds. This omission risks the exclusion of children with special needs or those who require additional support, such as children who have mental health issues.

²⁴⁸ Marjolein van der Kuil, 'Structuur, Steun en Stabiliteit', page 35.

4.6.1. Practical Situation

While some (crisis) emergency shelters benefit from municipal support and have hired activity coordinators to organize separate programs for men, women, and children, this remains the exception rather than the norm. In most shelters, financial and human resources are limited, and leisure programming relies heavily on local volunteers. Consequently, the frequency and quality of recreational activities vary widely.²⁵⁰ Furthermore, the uncertainty about how long a shelter will remain open makes consistent programming difficult.²⁵¹

A significant number of (crisis) emergency shelters lack designated play areas altogether.²⁵² According to research, at least eight centers lack safe indoor spaces, while six others offer no outdoor facilities. Three-quarters of the sites provide only minimal or irregular recreational opportunities.²⁵³

Professionals from youth healthcare services and GZA are often unaware of what activities are offered, leading to gaps in after-school and holiday programming. The lack of structured activities contributes to boredom, tension, and ongoing sleep disturbances, as children lack daily rhythm or outlet for their energy.²⁵⁴ Furthermore, existing recreational provisions frequently fail to accommodate older children, who are often left without age-appropriate activities.²⁵⁵ This gap in age-appropriate activities further compounds the challenges of integration, mental health, and development.

During the appeal case, the Dutch State did not contest the finding by the preliminary relief judge that obligations under the RCD and RVA were not always met concerning the right to play and leisure within (crisis) emergency centers. The State also did not raise objections to the four-week implementation period imposed to ensure compliance with the duty to provide leisure activities.²⁵⁶

The findings stated in this section indicate that this obligation was not met, which in turn highlights the need for stronger legal and operational safeguards to ensure that children's right to play, leisure, and rest is upheld in practice. The absence of structured, inclusive, and participatory recreational opportunities reveals a disconnect between the law on paper and its actual implementation. To meet the standards of the CRC, Dutch law must be revised to establish enforceable obligations regarding the quality, inclusivity, and child-centered nature of leisure provisions in asylum reception. Only through such reforms can the right to play be realized as more than a theoretical entitlement, ensuring that all children, regardless of their legal status, can live, rest, and grow with dignity.

²⁵⁰ Dokters van de Wereld, Rapport crisisnoodopvang juni 2023, page 18.

²⁵¹ Marjolein van der Kuil, 'Structuur, Steun en Stabiliteit', page 33.

²⁵² COA, 'Noodopvang: 'Het beste scenario is dat het niet meer noodzakelijk is'.

²⁵³ VWN, 'Gevlucht en Vergeten: Over de opvang van alleenreizende kinderen in Nederland', page 16.

²⁵⁴ Marjolein van der Kuil, 'Structuur, Steun en Stabiliteit', page 33.

²⁵⁵ Ibid page 35.

²⁵⁶ Gerechtshof Den Haag, para 10(12).

4.7. Concluding Remarks

Being forced to flee one's home is a life-altering experience that can result in toxic stress and long-term trauma.²⁵⁷ When reception conditions are poor, this trauma is often exacerbated.²⁵⁸ Moreover, since a child's development is closely shaped by the environment in which they grow up, inadequate reception settings can significantly hinder their emotional, cognitive, and social well-being.²⁵⁹

The analysis throughout this chapter has shown that both the legal framework and the practical implementation in the Netherlands fall short of meeting the standards set by the RCD, particularly those established by the CRC. Children's access to essential rights, including education, healthcare, adequate living conditions, play, participation, the right to be heard, and their best interest, is inconsistently protected. While regular reception centers generally offer acceptable conditions, as also affirmed by the court's ruling, the widespread and repeated violations in emergency and crisis shelters reflect a systemic problem.²⁶⁰ Nonetheless, the Court emphasized that while the RCD sets important benchmarks, it is not directly enforceable under Dutch law. This legal gap further hinders accountability and compliance.²⁶¹

Notably, the court's ruling did not engage with the CRC or other international human rights instruments, such as the EU Charter of Fundamental Rights, on which the RCD was built. This omission is striking and may reflect limitations in the arguments presented by litigants rather than a lack of relevance.

Nonetheless, even where formal legal provisions exist, they often lack the specificity or child-centered design required to guarantee rights in practice. Therefore, the problem lies not only in practice but also in the legal framework itself. The author argues that this reveals a structural failure: the existing legal safeguards are ineffective in providing the protection that asylum-seeking children need. The Netherlands must urgently introduce robust, enforceable child-specific safeguards. These must bridge the persistent gap between legal norms and the lived reality in reception centers, ensuring full compliance with both international and EU standards.

²⁵⁷ Marjolein van der Kuil, 'Structuur, Steun en Stabiliteit', page 20.

²⁵⁸ Ibid.

²⁵⁹ Elianne Zijlstra, et al., 'The Quality of the Childrearing Environment of Refugee or Asylum-Seeking Children and the Best Interests of the Child: Reliability and Validity of the BIC-Q' (2012) 30(6) *Behavioral Sciences & the Law* 264, page 841.

²⁶⁰ *Gerechtshof Den Haag*, para 10(1).

²⁶¹ *ibid* para 9(9 - 10).

5. CONCLUSION

This thesis has examined the extent to which the Dutch asylum reception system complies with its legal obligations set out in the EU Reception Conditions Directive and the United Nations Convention on the Rights of the Child. It focused on four essential socio-economic rights, as well as the suitability of accommodation types and the legal standards surrounding the transfer of children between facilities.

The analysis finds that, although the RCD includes important provisions for the protection of asylum-seeking children, the CRC offers a more comprehensive, enforceable, and child-centered legal framework, even in the absence of a dedicated asylum reception framework. The CRC not only enshrines the substantive content of children's rights but also prescribes how these rights must be realized, through binding principles such as non-discrimination, the best interests of the child, the right to be heard, the indivisibility of rights, and the prohibition of retrogressive measures. In contrast, while the RCD has evolved through successive recasts, it still falls short of fully integrating these standards. It lacks clarity, enforceability, and procedural safeguards, particularly concerning the right to remedies, participation, and rest. It is worth noting that while this thesis did not examine the role of the EU Charter of Fundamental Rights in detail, the RCD must be interpreted consistently with it and does not operate in isolation.

The CRC recognizes that resource limitations may impact implementation but rejects the use of such limitations as blanket justifications for inaction, a principle especially relevant for high-income EU Member States such as the Netherlands.²⁶²

Although the Dutch legal framework incorporates some of the requirements of the CRC and RCD, primarily through the RVA and related legislation, it lacks explicit, enforceable, and safeguarding standards tailored to the vulnerabilities of asylum-seeking children. In practice, the reception system within crisis and emergency shelters consistently fails to meet even the minimum standards. Children experience frequent transfers, limited access to education and healthcare, inadequate psychological support, poor living conditions, and insufficient opportunities for play and leisure. Their views are disregarded, and there are no accessible remedies. These failures are not isolated, but structural and long-standing, despite repeated warnings from courts, independent bodies, and civil society. As such, they amount to violations of binding legal norms.

A more profound concern lies in the disconnection between national policy and the human rights commitments the Dutch state has made. The prevailing narrative around asylum seekers often neglects their inherent dignity and humanity. This is not only a legal and moral failure, but also a missed societal opportunity. Many of these children will remain in the Netherlands and should be viewed as long-term investments in the country's future. Poor and traumatizing reception conditions risk exacerbating harm and undermining integration. Access to education, healthcare, play, community, and stability must be seen as foundational, not optional, elements of integration.²⁶³

Children must be recognized as rights-holders in the present, regardless of their status, culture, age, or location. Their childhood is not a waiting room for adulthood, and it should not feel like a gamble; instead, it should receive immediate respect and support.

The Dutch asylum reception system requires structural reform. It must transition from reactive crisis management to a stable, sustainable model underpinned by legal certainty, adequate funding, and robust

²⁶² Ciara Smyth, 'Migration, Refugees, and Children's Rights', page 444.

²⁶³ COA, Jaarverslag 2022 – Een veranderende wereld.

municipal coordination.²⁶⁴ Non-regular reception centers must not become normalized components of long-term reception. Instead, the government must ensure a permanent reception infrastructure with flexible capacity and prioritize smaller, community-based facilities that foster child development and well-being.²⁶⁵

Ultimately, this thesis argues that children in the asylum reception context require more detailed and effective legal safeguards than children outside the asylum context, due to their compounded vulnerability, which encompasses all the key principles of the CRC and RCD. These safeguards must include individualized best interest assessments prior to any transfer, legal prohibitions on discriminatory practices, institutionalized mechanism for child participation, and strengthened accountability tools to monitor compliance with CRC and RCD standards. Without such legal reforms, the rights of asylum-seeking children in the Netherlands will remain unrealized and unenforced.

²⁶⁴ COA, 'Shelter in different types of reception centres', <<https://www.coa.nl/en/shelter-different-types-reception-centres>> last visited (29-06-2025).

²⁶⁵ COA, Jaarverslag 2023 – Kerncijfers 2023, Van tijdelijk naar stabiel: nodig en mogelijk.

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