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*The involvement of refugee children in asylum application proceedings in the Netherlands*

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# ‘A Test that is about Your Life’\*: The Involvement of Refugee Children in Asylum Application Proceedings in the Netherlands

Stephanie Rap  \*\*

## ABSTRACT

Refugee children are often neither recognised as rights holders nor as active agents in asylum procedures. A one-sided view of these children as vulnerable objects is not in coherence with international children’s rights, including the UN Convention on the Rights of the Child, which regards all children as autonomous subjects and full bearers of rights. Through 21 in-depth interviews with unaccompanied, separated, and accompanied children in the Netherlands, their perceptions and experiences are collected and analysed in relation to their right to be informed and to participate in asylum application proceedings. It is shown that children possess little information on the asylum application interview, which they perceive as particularly stressful. However, they display agency in the choices they make during the interview. Accompanied children find themselves in a rather difficult position, feeling jointly responsible for the outcome of the procedure. It is concluded that effective and meaningful participation, in line with the international children’s rights framework, is difficult to realise in the context of asylum proceedings.

**KEYWORDS:** Refugee children, asylum procedure, children’s rights, participation, agency, information

\* R9: Boy, unaccompanied, from Afghanistan.

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## 1. INTRODUCTION

Since the adoption of the UN Convention on the Rights of the Child (CRC) in 1989,<sup>1</sup> which includes the right to be heard (Article 12 CRC), States should ensure that children have the opportunity to give their views on all important decisions in their life. Influenced by children's rights discourse, increased awareness has risen in the past few decades among professionals who work with children, to hear their voices. As a result, the topic of children's participation and the child's right to be heard in decision-making has received considerable attention.<sup>2</sup>

The right to be heard implies that children who are capable of forming their own views have the right to express those views freely in all matters affecting them (Article 12(1) CRC). Children should be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 12(2) CRC). Moreover, due weight should be given to the age and maturity of the child in taking into account her<sup>3</sup> views (Article 12(1) CRC). The right to be heard is seen as one of the major innovations of the CRC; it did not have a precedent in international law and there is no equivalent provision for adults.<sup>4</sup> This right has played a key role in shaping understandings of children as members of a separate social category and as active agents who are not simply objects of protection.<sup>5</sup> The concept of child participation has challenged traditional views on children (i.e. as being dependent and vulnerable) and hierarchical structures and relations between adults and children.<sup>6</sup> Moreover, it may give children a vehicle through which they can exercise other

- 1 Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 Nov. 1989 (entry into force: 2 Sep. 1990).
- 2 L. Lundy, "Voice" is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child", *British Educational Research Journal*, 33(6), 2007, 927–942; N.P. Thomas, "Towards a Theory of Children's Participation", *International Journal of Children's Rights*, 15(2), 2007, 199–218; E.K.M. Tisdall, J. Davis & M. Gallagher, "Reflecting Upon Children and Young People's Participation in the UK", *International Journal of Children's Rights*, 16(3), 2008, 343–354. M. Donnelley & U. Kilkelly, "Participation in Healthcare: The Views and Experiences of Children and Young People", *International Journal of Children's Rights*, 19(1), 2011, 107–125; A. Parkes, *Children and International Human Rights Law: The Right of the Child to be Heard*, London, Routledge, 2013; A. Daly, *Children, Autonomy and the Courts: Beyond the Right to be Heard*, Leiden, Brill Nijhoff, 2017; T. Liefwaard, "Access to Justice for Children: Towards a Specific Research and Implementation Agenda", *International Journal of Children's Rights*, 27(2), 2019, 195–227; C.R. Mol, "Children's Representation in Family Law Proceedings: A Comparative Evaluation in Light of Article 12 of the United Nations Convention on the Rights of the Child", *International Journal of Children's Rights*, 27(1), 2019, 66–98; S.E. Rap, "A children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court", *The International Journal of Children's Rights*, 24(1), 2016, 94–112.
- 3 For practical reasons, in this article children and adults are referred to using a feminine pronoun. Masculine children and adults are to be considered under this heading as well.
- 4 J. Tobin, "Justifying Children's Rights", *International Journal of Children's Rights*, 21(3), 2013, 395–441.
- 5 E. Verhellen, "The Convention on the Rights of the Child: Reflections from a Historical, Social Policy and Educational Perspective", in W. Vandenhoe, E. Desmet, D. Reynaert & S. Lembrechts (eds.), *Routledge International Handbook of Children's Rights Studies*, London, Routledge, 2015, 43–59; B. Vanobbergen, "Children's Rights and Childhood Studies: From Living Apart Together to a Happy Marriage", in W. Vandenhoe, E. Desmet, D. Reynaert & S. Lembrechts (eds.), *Routledge International Handbook of Children's Rights Studies*, London, Routledge, 2015, 60–76.
- 6 E.K.M. Tisdall, "Children and Young People's Participation: A Critical Consideration of Article 12", in W. Vandenhoe, E. Desmet, D. Reynaert & S. Lembrechts (eds.), *Routledge International Handbook of Children's Rights Studies*, London, Routledge, 2015, 185–200; D. Reynaert, E. Desmet, S. Lembrechts & W. Vandenhoe, "Introduction: A Critical Approach to Children's Rights", in W. Vandenhoe, E. Desmet,

fundamental rights,<sup>7</sup> which is of particular importance to refugee and asylum-seeking children.<sup>8</sup>

The UN Committee on the Rights of the Child (CRC Committee) has played a formative role in developing guidelines and requirements for the implementation of this right. It has commented that refugee and migrant children should have the opportunity to express their views on all aspects of the immigration and asylum proceedings (including any decision on care, shelter or migration status).<sup>9</sup> Also, the child must have the opportunity to present her reasons that lead to the asylum application, either filed independently or by a parent.<sup>10</sup> The CRC Committee also comments that “[c]hildren should be heard independently of their parents, and their individual circumstances should be included in the consideration of the family’s cases”.<sup>11</sup> In order to exercise the right to be heard, children need access to information, which is adapted to their age and capacities and has a child-friendly nature.<sup>12</sup> This means that refugee children should be able to understand the procedure and its consequences, have access to age-sensitive information about reception, registration, refugee status determination and other procedures and services, and decisions should be communicated to children in a language and manner they understand.<sup>13</sup> Finally, children should be informed about the decisions in person, supported by a professional and in a non-threatening environment.<sup>14</sup>

Furthermore, children’s growing capacities should be taken into account in exercising their rights (Article 5 CRC). This relates to the fact that due weight should be given to the views of the child depending on the age and capacities of that child. Due

D. Reynaert & S. Lembrechts (eds.), *Routledge International Handbook of Children’s Rights Studies*, London, Routledge, 2015, 1–23.

- 7 T. Liefwaard & J. Sloth-Nielsen, “25 Years CRC: Reflections on Successes, Failures and the Future”, in T. Liefwaard & J. Sloth-Nielsen, (eds.), *The United Nations Conventions on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead*, Leiden, Brill Nijhoff, 2017, 1–13.
- 8 R. Brittle, “A Hostile Environment for Children? The Rights and Best Interests of the Refugee Child in the United Kingdom’s Asylum Law”, *Human Rights Law Review*, 19, 2020, 753–785.
- 9 UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (UNCMW) & UN Committee on the Rights of the Child (UNCRC), *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration*, UN Doc CMW/C/GC/3-CRC/C/GC/22, 16 Nov. 2017, para. 37.
- 10 UN Committee on the Rights of the Child (UNCRC), *General Comment No. 12. The Right of the Child to be Heard*, UN Doc CRC/GC/2009/12, 20 July 2009, para. 123.
- 11 UNCMW & UNCRC, *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration*, para. 37.
- 12 UNCRC, *General Comment No. 12. The Right of the Child to be Heard*, paras. 16, 34; 82; 134(a); UN Committee on the Rights of the Child (UNCRC), *Treatment of unaccompanied and separated children outside their country of origin. General comment no. 6*, UN Doc CRC/GC/2005/6, 1 Sept. 2005, para. 25.
- 13 UN High Commissioner for Refugees (UNHCR), *A framework for the protection of children*, Geneva, UNHCR, 2012.
- 14 UN High Commissioner for Refugees (UNHCR), *Guidelines on international protection: Child Asylum claims under Articles 1 (A) and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to the Statutes of Refugees*, HCR/GIP/09/08, 22 Dec. 2009, para. 77.

to the dynamic nature of the child's right to be heard,<sup>15</sup> the CRC Committee recommends that states do not establish fixed age limits with regard to the implementation of this right.<sup>16</sup> Ideally, there should be an individual assessment carried out to determine whether the child is capable of expressing her views in every case.<sup>17</sup> In line with this, the CRC Committee ruled in a complaint brought forward under the Third Optional Protocol on a communications procedure, that the right to be heard was violated in the case of a five-year-old girl seeking asylum in Belgium. The CRC Committee assessed that the girl would have been very well able to voice her opinion in the case.<sup>18</sup>

Despite the innovative and progressive character of the right to be heard, concerns are raised about its meaning and effectiveness in practice.<sup>19</sup> A persistent criticism of child participation is the *tokenistic nature* of involving children. Hart states that *tokenism* refers to “those instances in which children are apparently given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions”.<sup>20</sup> Lundy departs from the point of view that the child's right to be heard runs counter to the instinct and interests of adults and that conditions should be created which make it impossible for adults to ignore the views of children in decision-making.<sup>21</sup> However, she argues that tokenistic ways of participating can sometimes be a starting point and are better than not involving children at all.<sup>22</sup> Moreover, the effectiveness of child participation partially depends on the willingness of adults to share their power over the process with children.<sup>23</sup> Shier argues that adults often deny children “developmentally appropriate degrees of responsibility” in the decision-making process and are reluctant in sharing their power.<sup>24</sup> At the same time, adults should be

- 15 See S.E. Rap, E.P. Schmidt & T. Liefwaard, “Safeguarding the Dynamic Legal Position of Children: A Matter of Age Limits? Reflections on the Fundamental Principles and Practical Application of Age Limits in Light of International Children's Rights Law”, *Erasmus Law Review*, 1, 2020, 4–12.
- 16 UNHCR, *Guidelines on international protection: Child Asylum claims under Articles 1 (A) and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to the Statutes of Refugees*, para. 21.
- 17 G. Lansdown, *The Evolving Capacities of the Child*, Geneva, UNICEF Innocenti Research Centre, 2005.
- 18 UN Committee on the Rights of the Child (UNCRC), *Y.B. and N.S. v. Belgium*, no. 12/2017, 27 Sept. 2018.
- 19 L. Lundy, “In Defence of Tokenism? Children's Right to Participate in Collective Decision-Making”, *Childhood*, 25(3), 2018, 340–354; T. Collins, “A Child's Right to Participate: Implications for International Child Protection”, *The International Journal of Human Rights*, 21(1), 2017, 14–46; A. Daly, “No Weight for ‘Due Weight’? A Children's Autonomy Principle in Best Interest Proceedings”, *International Journal of Children's Rights*, 26(1), 2018, 61–92; S.E. Rap & K.F.M. Klep, “Child Participation as the Holy Grail: Effective and Meaningful Participation in Judicial Proceedings?” in C. Boost et al. (eds.), *Myth or Lived Reality. On the (in)effectiveness of Human Rights*, The Hague, TMC Asser Press/Springer, 2021, p. 161–177.
- 20 R. Hart, *Children's Participation. From Tokenism to Citizenship*, Florence: UNICEF, 1992.
- 21 Lundy, ““Voice” is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child”.
- 22 Lundy, “In Defence of Tokenism? Children's Right to Participate in Collective Decision-Making”.
- 23 Thomas, “Towards a Theory of Children's Participation”.
- 24 H. Shier, “Pathways to Participation: Openings, Opportunities and Obligations”, *Children & Society*, 2001, 15(2), 107–117.

careful not to force too much responsibility onto children in the decision-making process.<sup>25</sup>

As explained above, in order for children to be able to participate meaningfully, they should receive information about the proceedings and what is expected from them. Several studies, however, have shown that children who are involved in legal proceedings have little knowledge of their rights and how to participate.<sup>26</sup> This causes or exacerbates feeling of stress and anxiety.<sup>27</sup> In earlier work I have argued that children involved in asylum procedures should be assisted more intensively in developing a better understanding of the meaning and implementation of their rights in practice to enable them to effectively exercise their rights. By receiving accurate and child-friendly information, children will be better prepared for their involvement in the procedures; it may alleviate feelings of stress and insecurity, enhance emotional well-being and it will give them guidance on where to go to in case they feel that their rights are not sufficiently upheld, or even violated.<sup>28</sup> Providing information and explanations also applies to the decisions that are made,<sup>29</sup> because this may help the child in better understanding and accepting these decisions.<sup>30</sup>

With regard to refugee children there is still limited understanding of their lived experiences of the migration process and the social and legal landscapes they are involved in.<sup>31</sup> Iraklis notes that while children's narratives largely remain unheard, they are crucial to better implement policies with regard to this group of children.<sup>32</sup> Often, refugee children are depicted as vulnerable victims, who have endured

25 *Ibid.*

26 S.D. Block, H. Oran, D. Oran, N. Baumrind & G.S. Goodman, "Abused and Neglected Children in Court: Knowledge and Attitudes", *Child Abuse & Neglect*, 34(9), 2010, 659–670; H. Bouma, M. López, E.J. Knorth & H. Grietens, "Meaningful Participation for Children in the Dutch Child Protection System: A Critical Analysis of Relevant Provisions in Policy Documents", *Child Abuse & Neglect*, 79, 2018, 279–292; U. Kilkelly, *Listening to Children about Justice: Report of the Council of Europe Consultation with Children on Child-Friendly Justice*, Strasbourg, Council of Europe, 2010; S.E. Rap, M.R. Bruning & D.S. Verkroost, "Children's Participation in Dutch Youth Care Practice: An Exploratory Study into the Opportunities for Child Participation in Youth Care from Professionals' Perspective", *Child Care in Practice*, 25(1), 2019, 1–14.

27 D.J.H. Smeets, M.R. Bruning, R. de Boer & K.G.A. Bolscher, "Praktijkonderzoek naar Ervaringen met de Civiele Procespositie van Minderjarigen", in M.R. Bruning et al. (eds.), *Kind in Proces: Van Communicatie naar Effectieve Participatie. Meijers-reeks no. 335*, Nijmegen, Wolf Legal Publishers, 2020, 161–234.

28 S.E. Rap, "The Right to Information of (Un)Accompanied Refugee Children: Improving Refugee Children's Legal Position, Fundamental Rights' Implementation and Emotional Well-being in the Netherlands", *International Journal of Children's Rights*, 28(2), 2020, 322–351.

29 UNCRC, *General Comment No. 12. The Right of the Child to be Heard*, paras. 28 and 45; see also UN Committee on the Rights of the Child, *General Comment No. 14. 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, 29 May, 2013, para. 6.

30 Collins, "A Child's Right to Participate: Implications for International Child Protection"; G. Schofield, "The Voice of the Child in Family Placement Decision-Making: A Developmental Model", *Adoption and Fostering*, 29(1), 2005, 29–43; G.G. van Bijleveld, C.W.M. Dedding & J.G.F. Bunders-Aelen, "Children's and Young People's Participation Within Child Welfare and Child Protection Services: A State-of-the-Art Review", *Child and Family Social Work*, 20(2), 2015, 129–138.

31 A. Lems, K. Oester & S. Strasser, "Children of the Crisis: Ethnographic Perspectives on Unaccompanied Refugee Youth in and En Route to Europe", *Journal of Ethnic and Migration Studies*, 46(2), 2020, 315–335.

32 G. Iraklis, "Move On, No Matter What... Young Refugee's Accounts of their Displacement Experiences", *Childhood*, 28(1), 2020, 170–176.

hardship to flee war and violence to find a safe place to grow up.<sup>33</sup> In recent years, this narrative has developed in two different directions. First, unaccompanied refugee children are increasingly depicted in popular discourse as a “crisis figure”; youths (mainly boys) who are fortune hunters from countries that are categorised as “safe countries”, who lie about their age and identity to gain access to Europe’s social welfare system, and who are part of transnational criminal gangs.<sup>34</sup> Secondly, in recent academic debates refugee children’s agency is frequently stressed, as opposed to seeing and treating them solely as “refugee victims”. Several studies have shown that unaccompanied refugee children exercise agency in the choices they make, regarding their decision to migrate and to build a future in a new country.<sup>35</sup> This narrative is also increasingly embraced by European policymaking bodies, such as the European Commission and the Council of Europe.<sup>36</sup>

This article focusses on the involvement and role of refugee children, below the age of 18, in formal asylum application proceedings in the Netherlands. In particular, children’s own experiences and perceptions of their involvement in the asylum procedure have been studied. The key question guiding this research is whether refugee children have the possibility to meaningfully participate in these proceedings, as required by international children’s rights law and standards? Several key components of the international children’s rights framework in relation to the right to participation of refugee children will be addressed in this article, such as access to information, legal representation and support, the right to be heard, and adapted and child-friendly procedures.<sup>37</sup> The article will ask, to what extent do these components

33 Lems, Oester & Strasser, “Children of the Crisis: Ethnographic Perspectives on Unaccompanied Refugee Youth in and En Route to Europe”; V. Flegar, “Who is Deemed Vulnerable in the Governance of Migration? Unpacking UNHCR’s and IOM’s Policy Label for Being Deserving of Protection and Assistance”, *Asiel & Migrantenrecht*, 2018, 8, 374–383.

34 Lems, Oester & Strasser, “Children of the Crisis: Ethnographic Perspectives on Unaccompanied Refugee Youth in and En Route to Europe”.

35 M. Belloni, “Family Project or Individual Choice? Exploring Agency in Young Eritreans’ Migration”, *Journal of Ethnic and Migration Studies*, 46(2), 2020, 336–353; J. Allsopp, E. Chase & M. Mitchell, “The Tactics of Time and Status: Young People’s Experiences of Building Futures while Subject to Immigration Control in Britain”, *Journal of Refugee Studies*, 28(2), 2014, 163–182; J. Allsopp & E. Chase, “Best Interests, Durable Solutions and Belonging: Policy Discourses Shaping the Futures of Unaccompanied Minors Coming of Age in Europe”, *Journal of Ethnic and Migration Studies*, 45(2), 2019, 293–311; F. Meloni, “The Limits of Freedom: Migration as a Space of Freedom and Loneliness among Afghan Unaccompanied Migrant Youth”, *Journal of Ethnic and Migration Studies*, 46(2), 2020, 423–438; E. Chase, “Transitions, Capabilities and Wellbeing: How Afghan Unaccompanied Young People Experience Becoming ‘Adult’ in the UK and Beyond”, *Journal of Ethnic and Migration Studies*, 46(2), 2020, 439–456.

36 European Union (EU), *EU Strategy on the Rights of the Child 2021*, Luxembourg, Publications Office of the European Union, 2021; U. Kilkelly, S.E. Rap, G. Coron & G. Moschos, *Promoting Child-friendly Approaches in the Area of Migration. A Review of Standards, Guidance and Current Practices*, Strasbourg, Council of Europe, 2019.

37 See S.E. Rap, “Access to Justice and Child-friendly Justice for Refugee and Migrant Children: International and European Legal Perspectives”, *Europe of Rights & Liberties/Europe des Droits & Libertés*, 2020, 2, 277–292; Rap, “The Right to Information of (Un)Accompanied Refugee Children: Improving Refugee Children’s Legal Position, Fundamental Rights’ Implementation and Emotional Well-being in the Netherlands”; S.E. Rap, “Le droit à la participation efficace des enfants réfugiés et migrants: l’opinion des Professionnels sur le droit des enfants d’être entendu dans les procédures d’asile aux Pays-Bas”, in P. Noreau, D. Goubau, M.-C. Saint-Jacques, S. van Praagh, V. Fau & C. Robitaille (eds.), *La jeunesse au*

play a role in the lived experiences of refugee children regarding their involvement in the asylum procedure.

This article starts with a brief overview of the existing literature regarding the participation of children in judicial, and in particular, in asylum proceedings in Section 2. After explaining the methodology in Section 3, the results will be discussed in Section 4. The results are structured around the key components of informing children, hearing children and the outcome of the process. The article closes with a discussion of the findings in Section 5.

## 2. THE INVOLVEMENT OF CHILDREN IN DECISION-MAKING

### 2.1. Children's participation in judicial proceedings

Research on the involvement of children in decision-making overwhelmingly show children's desire to be included in decisions affecting their lives<sup>38</sup> and this outweighs the possible concerns children have regarding being involved in the proceedings.<sup>39</sup> Generally, participation makes children feel respected as autonomous persons. An autonomy-supportive environment has demonstrated to benefit children by stimulating engagement, motivation, and achievement (e.g. in an educational setting, by parents and in (mental) health care).<sup>40</sup> Vis, Stranbu, Holtan, and Thomas indicate that child participation has a "therapeutic effect" of being respected and acknowledged.<sup>41</sup> A lack of (perceived) autonomy decreases self-esteem and negatively affects the development of children's reasoning skills and their ability to express their own views:<sup>42</sup> children "learn" not to have a say and, as a consequence, do not develop

*carrefour De la famille, de la communauté, du droit et de la société / Youth at the Crossroads of Family, Community, Law and Society*, Montréal, Edition Thémis, 2021, 43–74. S.E. Rap & M.A.C. Gaudard, "Access to Justice for Refugee and Migrant Children: Child-friendly Justice in the Context of Migration", in N.E. Yaksic (ed.), *Access to Justice for Children in the Context of International Mobility*. Mexico's Supreme Court of Justice / Human Rights Office, 2021, 189–230. S.E. Rap, "The Participation of Children in Asylum Procedures", in M. Klaassen, S.E. Rap, P. Rodrigues & T. Liefwaard (eds.), *Safeguarding Children's Rights in Immigration Law*, Antwerp, Intersentia, 2020, 17–40.

- 38 R.R. Nunes, "Participation in Child Protection: Empowering Children in Placement Processes", *The International Journal of Human Rights*, 26(3), 2022, 420–436; J. Cashmore & P. Parkinson, "What Responsibilities Do Courts Have to Hear Children's Voices?", *International Journal of Children's Rights*, 15(1), 2007, 43–60; Kilkelly, "Listening to Children about Justice: Report of the Council of Europe Consultation with Children on Child-Friendly Justice"; K. Saywitz, L.B. Camparo & A. Romanoff, "Interviewing Children in Custody Cases: Implications of Research and Policy for Practice", *Behavioral Sciences and the Law*, 28(4), 2010, 542–562.
- 39 R. Birnbaum & N. Bala, "Views of the Child Reports: The Ontario Pilot Project", *International Journal of Law Policy and the Family*, 31(3), 2017, 344–362; Cashmore & Parkinson, "What Responsibilities Do Courts Have to Hear Children's Voices?"; Smeets et al., "Praktijkonderzoek naar Ervaringen met de Civiele Procespositie van Minderjarigen".
- 40 J. Reeve, H. Jang, D. Carrell, S. Jeon & J. Barch, "Enhancing Students' Engagement by Increasing Teachers' Autonomy Support", *Motivation and Emotion*, 28(2), 2004, 147–169; Y.L. Su & J. Reeve, "A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy", *Educational Psychology Review*, 23(1), 2011, 159–188.
- 41 S.A. Vis, A. Stranbu, A. Holtan & N. Thomas, "Participation and Health – A Research Review of Child Participation in Planning and Decision-Making", *Child & Family Social Work*, 16(3), 2011, 325–335.
- 42 P.A. Klaczynski, J.P. Byrnes & J.E. Jacobs, "Introduction to the Special Issue: The Development of Decision Making", *Journal of Applied Developmental Psychology*, 22(3), 2011, 225–236.



trust in their abilities to make decisions on their own.<sup>43</sup> Being unable to participate can result in feelings of frustration, desperation, and powerlessness, and even problem behaviour.<sup>44</sup> In contrast, by having children participate in decision-making, an opportunity is created for professionals to make a more responsive decision that fits the child's needs.<sup>45</sup> It is of importance, however, to take into account some key aspects, based on pedagogical and psychological knowledge and practice, to make the involvement of the child meaningful, such as informing children, creating a safe environment and using certain communication skills.<sup>46</sup> It has also been shown that participation increases the chance that children will accept a decision, even when the decision is not in line with the child's own wishes.<sup>47</sup>

## 2.2. Children's participation in asylum proceedings

Generally, it can be concluded from research that asylum procedures are predominantly designed for adults and not adapted to children.<sup>48</sup> Children and parents who seek asylum find themselves in a vulnerable situation, because of the experience of fleeing their home country and arriving in a foreign country where they have to apply for asylum. This involves highly complex legal procedures, often in a language they do not understand.<sup>49</sup> Moreover, many refugee children show symptoms of post-traumatic stress and experience emotional problems.<sup>50</sup> This relates to the uncertainty regarding their legal status, the rules and regulations guiding the process, the long periods of waiting for decisions, and receiving refusals from the immigration

- 43 C. Leeson, "My Life in Care: Experiences of Non-Participation in Decision-Making Processes", *Child & Family Social Work*, 12(3), 2007, 268–277.
- 44 S. Bessell, "Participation in Decision-Making in Out-of-Home Care in Australia: What Do Young People Say?", *Children and Youth Services Review*, 33(4), 2011, 496–501, 498; V. Barnes, "Social Work and Advocacy with Young People: Rights and Care in Practice", *The British Journal of Social Work*, 42(7), 2012, 1275–1292; K. Winter, "The Perspectives of Young Children in Care about their Circumstances and Implications for Social Work Practice", *Child & Family Social Work*, 15(2), 2010, 186–195.
- 45 Vis, Stranbu, Holtan & Thomas, "Participation and Health – A Research Review of Child Participation in Planning and Decision-Making".
- 46 See D.J.H. Smeets & S.E. Rap, "Child Participation in Family Law Proceedings: Pedagogical Insights on Why and How to Involve Children", in W. Schrama et al. (eds.), *International Handbook on Child Participation in Family Law*, Antwerp, Intersentia, 2021, 41–66.
- 47 See also Saywitz, Camparo & Romanoff, "Interviewing Children in Custody Cases: Implications of Research and Policy for Practice".
- 48 C. Smyth, *European Asylum Law and the Rights of the Child*, New York, Routledge, 2014; H.E. Stalford, "David and Goliath: Due Weight, the State and Determining Unaccompanied Children's Fate", *Immigration, Asylum and Nationality Law*, 32(3), 2018, 258–283.
- 49 E. Chase, H. Rezaie & G. Zada, "Medicalising Policy Problems: The Mental Health Needs of Unaccompanied Migrant Young People", *The Lancet*, 394, 2020, 1305–1307; Chase, "Transitions, Capabilities and Wellbeing: How Afghan Unaccompanied Young People Experience Becoming 'Adult' in the UK and Beyond"; Allsopp & Chase, "Best Interests, Durable Solutions and Belonging: Policy Discourses Shaping the Futures of Unaccompanied Minors Coming of Age in Europe"; Allsopp, Chase & Mitchell, "The Tactics of Time and Status: Young People's Experiences of Building Futures while Subject to Immigration Control in Britain".
- 50 C. van Os, *Best Interests of the Child Assessments for Recently Arrived Refugee Children. Behavioural and Children's Rights Perspectives on Decision-Making in Migration Law*, PhD Thesis, Groningen, University of Groningen, 2018; I. Derluyn, E. Broekaert & G. Schuyten, "Emotional and Behavioural Problems in Migrant Adolescents in Belgium", *European Child & Adolescent Psychiatry*, 17(1), 2008, 54–62.

authorities.<sup>51</sup> Iraklis reports that refugee children resettled in Greece experience “[...] feelings, such as panic, suspiciousness and overwhelming anxiety evoked by these extreme circumstances”.<sup>52</sup>

Previous studies have shown that it is particularly complicated for unaccompanied refugee children to participate in an effective and meaningful manner.<sup>53</sup> It is argued that the adversarial nature of asylum procedures in some countries, as well as the important role that the child’s testimony and evidence play in substantiating the asylum application, prevent the child’s right to be heard from being implemented.<sup>54</sup> Power is unequally distributed in the asylum procedure and the asylum applicant bears the burden of proof.<sup>55</sup> Moreover, several studies show that children experience hostile interrogation techniques, feel attacked and intimidated, with questions asked to expose inconsistencies and to question the credibility of the child’s story.<sup>56</sup> Immigration officials often do not possess extensive skills which pertain to communicating with children, because of a lack of training and specialisation.<sup>57</sup>

Accompanied children, who file an asylum claim together with their parents, are often not automatically heard in the asylum procedure.<sup>58</sup> As a consequence, accompanied children are also often not informed directly about the procedure by the

- 51 Chase, “Transitions, Capabilities and Wellbeing: How Afghan Unaccompanied Young People Experience Becoming ‘Adult’ in the UK and Beyond”; Allsopp, Chase & Mitchell, “The Tactics of Time and Status: Young People’s Experiences of Building Futures while Subject to Immigration Control in Britain”.
- 52 Iraklis, “Move On, No Matter What . . . Young Refugee’s Accounts of their Displacement Experiences”, 3.
- 53 R.K.S. Kohli, “The Sound of Silence: Listening to What Unaccompanied Asylum-Seeking Children Say and Do Not Say”, *British Journal of Social Work*, 46(5), 2006, 707–721.
- 54 L. Shamseldin, “Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden”, *International Journal of Children’s Rights*, 20(1), 2012, 90–121; Stalford, “David and Goliath: Due Weight, the State and Determining Unaccompanied Children’s Fate”.
- 55 J. Dahlvik, “Asylum as Construction Work: Theorizing Administrative Practices”, *Migration Studies*, 5(3), 2017, 369–388; A. Lundberg & J. Lind, “Technologies of Displacement and Children’s Right to Asylum in Sweden”, *Human Rights Review*, 18(2), 2017, 189–208.
- 56 Brittle, “A Hostile Environment for Children: The Rights and Best Interests of the Refugee Child in the United Kingdom’s Asylum Law”; Stalford, “David and Goliath: Due Weight, the State and Determining Unaccompanied Children’s Fate”; Shamseldin, “Implementation of the United Nations Convention on the Rights of the Child 1989 in the Care and Protection of Unaccompanied Asylum Seeking Children: Findings from Empirical Research in England, Ireland and Sweden”; D. Hedlund, “Constructions of Credibility in Decisions Concerning Unaccompanied Minors”, *International Journal of Migration*, 13(2), 2017, 157–172; L. Darmanaki Farahani & G.L. Bradley, “The Role of Psychosocial Resources in the Adjustment of Migrant Adolescents”, *Journal of the Pacific Rim Psychology*, 12(3), 2018, 1–11; E. Chase, “Security and Subjective Wellbeing: The Experiences of Unaccompanied Young People Seeking Asylum in the UK”, *Sociology of Health and Illness*, 35(6), 2013, 858–872.
- 57 N. Doornbos, *Op Verhaal Komen. Institutionele Communicatie in de Asielprocedure*, Nijmegen, Wolf Legal Publishers, 2006; S.E. Rap, “Betekenisvolle participatie van vluchtelingenkinderen in de asielprocedure. Het doel van de asielprocedure, het recht om gehoord te worden en de rol van het kind”, *Tijdschrift voor Familie- en Jeugdrecht*, 2021, 10, 275–281.
- 58 This is the case even though the international standards recommend immigration authorities to hear these children individually as well, see UNCMW & UNCRC, *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration*, para. 37.

authorities, because their parents are deemed responsible for doing so.<sup>59</sup> Some argue that as a result, these children are seriously disadvantaged because “they are not considered adult enough for their asylum claims to be considered, and at the same time not children enough to deserve qualification as bearer of children’s rights”.<sup>60</sup> Accompanied children have a less firm legal position, since their parents represent their interests, and no independent representation is available for them.<sup>61</sup> Oftentimes, parents are not aware of possible independent asylum motives (i.e. child-specific forms of persecution)<sup>62</sup> that their children may have, or are unwilling to disclose those to the authorities.<sup>63</sup> Moreover, parents may be unable to adequately represent the interests of their children, and usually for accompanied children no best interests assessment is carried out by the authorities.<sup>64</sup> Moreover, countries apply different age limits to hearing accompanied children in the procedure,<sup>65</sup> in the Netherlands, accompanied children are interviewed separately by the immigration authorities from the age of 15, whereas unaccompanied children are heard from the age of six. It can happen that the narrative of the child contradicts narratives of the parents regarding their flight, which can call into question the credibility of the story presented to the immigration authorities. A study conducted in Sweden, however, showed that “children’s stories are often used strategically” to strengthen their parents’ asylum claims rather than being valued in itself.<sup>66</sup> In fact, Swedish immigration officials are reluctant to interview these children at all – and to use their story to construct the truth – because of the opposing facts that may arise.<sup>67</sup>

- 59 A.C. Cederborg, “Children’s Right to be Heard from their Unique Perspectives”, in S. Mahmoudi, P. Leviner, A. Kaldal & K. Lainpeltto (eds.), *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Leiden, Brill Nijhoff, 2015, 73–84. M.E. Crock, “Justice for the Migrant Child: The Protective Force of the Convention on the Rights of the Child”, in S. Mahmoudi, P. Leviner, A. Kaldal & K. Lainpeltto (eds.), *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Leiden, Brill Nijhoff, 2015, 219–241; L. Ottosson & A. Lundberg, “People out of place? Advocates’ Negotiations on Children’s Participation in the Asylum Application Process in Sweden”, *International Journal of Law, Policy and the Family*, 27(2), 2013, 266–287.
- 60 Lundberg & Lind, “Technologies of Displacement and Children’s Right to Asylum in Sweden”, 205; A. Lundberg, “The Best Interests of the Child Principle in Swedish Asylum Cases: The Marginalization of Children’s Rights”, *Journal of Human Rights Practice*, 3(1), 2011, 49–70; Ottosson & Lundberg, “People out of place? Advocates’ Negotiations on Children’s Participation in the Asylum Application Process in Sweden”; H. Lidén & H. Rusten, “Asylum, Participation and the Best Interests of the Child: New Lessons from Norway”. *Children and Society*, 21(4), 2007, 273–283; R. Brittle & E. Desmet, “Thirty Years of Research on Children’s Rights in the Context of Migration. Towards Increased Visibility and Recognition of Some Children, But Not All?”, *International Journal of Children’s Rights*, 28(1), 2020, 36–65.
- 61 M.E. Kalverboer & A.E. Zijlstra, *Kinderen uit Asielzoekersgezinnen en het Recht op Ontwikkeling. Het Belang van het Kind in het Vreemdelingenrecht*, Amsterdam, Uitgeverij SWP, 2006.
- 62 See UNCRC, *Treatment of unaccompanied and separated children outside their country of origin. General comment no. 6*, para. 74.
- 63 A.M. Reneman, *EU Asylum Procedures and the Right to an Effective Remedy*, Oxford and Portland Oregon, Hart Publishing, 2014.
- 64 Kalverboer & Zijlstra, *Kinderen uit Asielzoekersgezinnen en het Recht op Ontwikkeling. Het Belang van het Kind in het Vreemdelingenrecht*.
- 65 J.M. Pobjoy, *The Child in International Refugee Law*, Cambridge, Cambridge University Press, 2017.
- 66 Ottosson & Lundberg, “People out of place? Advocates’ Negotiations on Children’s Participation in the Asylum Application Process in Sweden”, 284.
- 67 Lundberg & Lind, “Technologies of Displacement and Children’s Right to Asylum in Sweden”.

### 3. METHODOLOGY

This study was conducted as part of a three-year research project about the effective participation of refugee children in Dutch asylum procedures. Between February 2020 and June 2021, semi-structured interviews were held with 21 unaccompanied, separated, and accompanied children, who had applied or were in the process of applying for asylum in the Netherlands (see [Table 1](#)).

Under the CRC, children are defined as persons up to the age of 18 (Article 1 CRC). For this study, refugee children were deemed to be all children who had applied for asylum, whether they fled conflict or persecution or were seeking international protection on other grounds.<sup>68</sup> The CRC Committee has further defined unaccompanied 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”.<sup>69</sup> Separated children are defined as: “children [...] who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members”.<sup>70</sup> The third group, accompanied refugee children, are accompanied by their parent(s) or primary caregiver(s).

Respondents were selected through various methods. First, the author came into contact with young people through the NGO, Defence for Children Netherlands. Secondly, via a gatekeeper, with individuals then selected through snow ball sampling. Thirdly, young people were also selected at a high school for migrant children (International Transition Class), which agreed to cooperate in this study.

Each participant received an information letter about the study, including the contact details of the principal researcher. Respondents gave written informed consent before the start of the research interview. Participation in this study was entirely voluntary and respondents were able to withdraw their involvement at any moment and have their interview removed from the sample. The majority of the interviews was held face to face, at the office of Defence for Children, the high school, the home of a young person and in public spaces such as cafés and public libraries. Due to Covid-19 related lockdown measures, two interviews were held remotely through a video call, using the end-to-end encrypted WhatsApp platform. These interviews were held with young adults, over the age of 18, who confirmed they felt comfortable to participate in a remote interview. All participants were offered a gift voucher as a token of appreciation and compensation for their time investments. Ethical approval was obtained from the Committee Ethics and Data of Leiden Law School.

The interviews were guided by a topic list, with the list prepared by the author on the basis of existing literature and the international children's rights framework. The questions were centred around the issue of information provision and expectations before the asylum application interviews with the immigration authorities, the actual asylum interviews and perception of young people of their involvement and the

68 UNCRF, *Treatment of unaccompanied and separated children outside their country of origin*. General comment no. 6, para. 18.

69 *Ibid.*, para. 7.

70 *Ibid.*, para. 8.

**Table 1: Background of respondents**

#	Country of origin	Age at arrival	Status	Type of application
1	Iraq	4	Accompanied	Asylum
2	Armenia	8	Accompanied	Asylum
3	Russia	13	Accompanied	Asylum
4	Syria	0	Accompanied	Asylum
5	Palestine (Gaza)	15	Accompanied	Asylum
6	Syria (Palestinian)	16	Unaccompanied	Asylum
7	Syria	17	Unaccompanied	Asylum
8	Syria	16	Accompanied	Family reunification
9	Afghanistan	12/13	Unaccompanied/ separated	Asylum
10	Yemen	16/17	Accompanied	Asylum
11	Yemen	17	Unaccompanied	Asylum
12	Yemen	16	Unaccompanied/ separated	Family reunification
13	Iran (Afghanistan)	15	Accompanied	Family reunification
14	Turkey	11	Accompanied	Asylum
15	Yemen	13	Accompanied	Family reunification
16	Yemen	12	Accompanied	Family reunification
17	Jordan (Palestinian)	11	Accompanied	Family reunification
18	Yemen	13	Unaccompanied	Asylum
19	Yemen	11	Accompanied	Asylum
20	Yemen	17	Unaccompanied	Asylum
21	Yemen	17	Unaccompanied	Asylum

outcome of the asylum application. The research interviews lasted between 12 and 40 minutes. All but two interviews were held in Dutch, because the young people were sufficiently able to understand and respond in Dutch. Two respondents preferred to have the interview in English. The findings presented in this article provide insight into the personal experiences of respondents and are not aimed to be generalisable.

The sample consists of 12 girls and nine boys. At the time of the interview the young people were between 12 and 22 years old. Eight young people were unaccompanied minors when they arrived in the Netherlands. Three of these, however, arrived with other family members (i.e. grandparents, an adult brother and his family, and an uncle and aunt). The other 13 arrived in the company of their parent(s) and other siblings. On their arrival, the children were between 4 and 17 years old (one respondent was born in the Netherlands). Six young people were involved in a family reunification procedure and the other 15 applied for asylum (or their parent(s) did). In Table 1 the country of origin of the young people is displayed. This is the country of the nationality of the young person, however, some of them had also resided in other countries before arriving in the Netherlands (e.g. Malaysia, Saudi-Arabia, Iran, Qatar, Egypt, Greece). Moreover, some of the participants identify as Palestinian.

The interviews were audio recorded and fully transcribed. The interview transcripts were pseudonymised, to protect the identity of respondents. A code scheme, developed by the author and based on the interview topic list, was used to thematically code the interviews in the qualitative coding software package NVivo. Throughout the results section of this article illustrative direct quotations from the respondents are included, which the author has translated from Dutch into English.

## 4. RESULTS

### 4.1. Information provision to children

When arriving in the Netherlands, people seeking asylum have to report to the application centre in the north of the Netherlands (a village named Ter Apel). Unaccompanied and separated minors are placed under the guardianship of the state and are assigned a legal guardian, generally a specialised child protection officer of the guardianship organisation Nidos.<sup>71</sup> In addition, when the asylum procedure starts a lawyer is assigned.<sup>72</sup> Information regarding the procedure is provided by the immigration authorities, the child protection officer and the Dutch Council for Refugees (DCR).<sup>73</sup>

Most respondents indicated that they received information about the asylum application process, orally or in writing in this centre. Written materials were in a language they understood (e.g. Arabic) and some indicated that an interpreter was present at the application centre. The unaccompanied minors largely indicated that their Nidos guardian also provided information to them and was able to explain the procedure. Some respondents also received information from a lawyer during a meeting to discuss the asylum application process. However, many respondents also indicated that they used other sources of information in relation to seeking asylum in the Netherlands, such as family members, other people they had met when travelling or in a reception centre or online on internet fora. For children who were accompanied by their parents and for those who came through family reunification, the parent or family member that had already applied for asylum, were the main source of information. However, one respondent explained that not necessarily all the information received was correct:

R: No, at that time nothing, no. Actually then, yes, we heard a lot of false information that was bad, so to say, also for us.

I: From other residents at the reception centre?

R: Also from other residents from the reception centre and yes, also people who, who helped us get to the Netherlands so to say.

I: Oh, yes. You mean, yes, how do you say that, human traffickers?

71 Art. 3.109d(1) Aliens Decree 23 Nov. 2000, the Netherlands.

72 See Art. 25(1) Directive 2013/32/EU of the European Parliament and of the Council of 26 Jun. 2013 on common procedures for granting and withdrawing international protection (recast).

73 See Rap, "The Right to Information of (Un)Accompanied Refugee Children: Improving Refugee Children's Legal Position, Fundamental Rights' Implementation and Emotional Well-being in the Netherlands"; Aliens Circular 2000 (C), the Netherlands, para. 2.2; Art. 3.109(2) and Art. 3.108c(2) Aliens Decree 2000.

R: Yes, yes, exactly.

I: Yes, and they did not give correct information about. . .

R: No, but at that time, we didn't know, so to say. . .

I: No.

R: . . . Yes, we had to sort of follow it, so to say.

(R9: Boy, unaccompanied, from Afghanistan)

A girl respondent explained that she got confused by the information she received from other people in the reception centre and it made her feel more stressed. Most respondents indicated that they did not really know what to expect from the interviews with the IND. Generally, they knew that they had to answer questions about their own lives and what they had experienced, so they expected that the questions were not going to be very difficult:

R: Yes, well, I had the feeling you were not meant to be prepared. These are questions about your life, so you should know them. So, you are not going to prepare answers to the questions. You already know and you are going to tell it.

I: So, you did not feel like it was necessary to prepare for it.

R: No, exactly, no, you just had a story and you are going to tell it, so. . . that's what I thought, a little.

(R5: Girl, accompanied, from Palestine)

In general, the respondents did not have a clear view of what to expect from the interviews with the immigration authorities and the type of questions that they could expect.

## 4.2. The asylum interview

### 4.2.1. Representation and support

In the Netherlands, unaccompanied children from the age of 6 are interviewed by the immigration authorities.<sup>74</sup> Accompanied children are interviewed from the age of 15, next to their parents being interviewed separately.<sup>75</sup> Usually, several interviews

74 S.E. Rap & A.S. Florescu, "Do the Views of the Child Matter? Het horen van jonge kinderen in de internationale kinderonvoeringsprocedure en de asielpcedure in Nederland", in M.R. Bruning et al. (eds.), *De invloed van 30 jaar Kinderrechtenverdrag in Nederland. Perspectieven voor de rechtspraak*, Deventer, Wolters Kluwer, 2020, 157–173; L.H.M. van Willigen, *Verslag van de Quick Scan van 'Het Kind in het Asielbeleid' in de Praktijk. Een Inventarisatie van Knelpunten ten aanzien van de Waarborging van een zo Ongestoord Mogelijke Ontplooiing en Ontwikkeling van Kinderen die naar Nederland zijn Gekomen om Asiel te Verkrijgen*, Amsterdam, Consultant Gezondheidszorg Vluchtelingen en Mensenrechten, 2003.

75 Immigratie- en naturalisatiedienst, *De Procedure in het Aanmeldcentrum*, Den Haag, IND, 2014; van Willigen, *Verslag van de Quick Scan van 'Het Kind in het Asielbeleid' in de Praktijk. Een Inventarisatie van Knelpunten ten aanzien van de Waarborging van een zo Ongestoord Mogelijke Ontplooiing en Ontwikkeling van Kinderen die naar Nederland zijn Gekomen om Asiel te Verkrijgen*; FRA, *Mapping Minimum Age Requirements with Respect to the Rights of the Child in the EU. Asylum Applications for Accompanied Children, 2017*, available at <<https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/asylum-accompanied>> (last visited 29 June 2021); FRA, *Children's Rights and Justice – Minimum Age Requirements in the EU*, Luxembourg, Publications Office of the European Union, 2018.

take place in which the identity and family composition of the child are determined and in which the child is asked to explain her motives for applying for asylum.<sup>76</sup> The lawyer or the legal guardian should have the possibility to be present at the interviews.<sup>77</sup>

Except for one separated girl, all unaccompanied minors indicated that they were in contact with a child protection officer until they turned 18. Twelve respondents indicated that they had been in contact with a lawyer (sometimes together with their parents) during the application process. Mostly, the younger accompanied children were not in contact with a lawyer, because their parents filed the asylum application. Ten respondents were or still are in contact with the Dutch Council for Refugees about their application. However, several respondents explained that they have been in interviews alone, without the company of a representative. Lawyers were never present during the interviews and occasionally a child protection officer or representative of DCR was present. Also, some respondents indicated that they were interviewed in the company of other family members. This mostly was the case in family reunification cases. The respondents were mixed in opinions about the added value of having someone present to support. One boy told about the support he received from the child protection officer during the interview:

R: But the second, it was my Nidos [guardian], with me, and he know like about me a lot. Sometimes like when I get confused and these things, he just remember me.

I: Oh okay.

R: Yes. Like he help me. It was good like to be him like on the meeting.

I: Yeah.

R: I feel like when I do the meeting, the interview, it was like people I don't know them.

I: Yeah.

R: Yeah but him, like it was different. I know him for like one year and something so it was different. It was good to have him there.

(R21: Boy, unaccompanied, from Yemen)

Another girl, however, was uncomfortable about having her grandmother present at the interviews:

R: Yes, for example, when children want to go to those meetings, then they should really be alone there. Then they have the freedom to tell everything and explain everything. But if they sit there with someone from the family, for example, it is a little awkward.

[...]

I: Was someone from your family there, then, during meetings?

76 Art. 2.11 Aliens Circular 2000 (C).

77 Art. 3.109d (4-5) Aliens Decree 2000



R: Yes, it happened with my grandma, some things I did not want to say when she was there. She was there during one or two meetings and then I told the Nidos guardian that I would rather go alone.

[...]

R: Yes, they thought it would be better for me because I was afraid and that she should stay with me.

(R6: Girl, unaccompanied, from Syria)

Others felt that they did not really need the support from a representative and they were fine being in the interviews alone.

Another emerging theme in the interviews was the role of the interpreter. Several respondents indicated that the interpreter was not translating their answers accurately. They were able to understand some Dutch already and they felt that answers were translated too briefly, compared to what they said. This made them feel insecure and stressed. One girl decided to ask for another interpreter:

R: But yes, I wanted, because I thought: the way that he... that he would translate the questions so to say. I felt like he didn't, like: okay, I believe you, for example, not your story, sort of [...]

R: So my preference was not really a woman, it did not really matter to me, but I thought if I said for example: I do not think this interpreter is good, or something. So I thought: okay, I will say that I would rather have a woman, because I just wanted to change the interpreter.

I: Yes, indeed. You did not want to say that you... .

R: I did not want to say like: okay I do not think it is good that he... .

(RS: Girl, accompanied, Palestine)

#### 4.2.2. Feelings and perceptions of the asylum interviews

Almost all respondents indicated they felt nervous and stressed before the interviews.<sup>78</sup> They explained that they did not know what to expect and while their goal was to stay in the Netherlands, they were insecure about the outcome of the process. One girl explained:

R: Yes, I thought it was nerve-wracking. Because I never experienced that before, I do not know what, yes, what they are going to ask there. Yes, you get an idea so to say of what they are going to ask, but I just felt very nervous.

(R7: Girl, unaccompanied, from Syria)

Most respondents were positive about how they were treated during the interview. They indicated that it was a serious meeting which took quite long, but the

78 See also N. Gill, J. Allsopp, A. Burrige, D. Fisher, M. Griffiths, J. Hambley, N. Hoellerer, N. Paszkiewicz & R. Rotter, "What's Missing from Legal Geography and Materialist Studies of Law? Absence and then the Assembling of Asylum Appeal Hearings in Europe", *Transactions of the Institute of British Geographers*, 45, 2019, 937–951.

immigration officer was friendly and they were able to take enough breaks. As a result, for some respondents, their level of stress somewhat eased, because they understood the questions and they are able to answer them. Most other respondents, however, indicated that they still felt pressure and stress during the interview, because they had to talk about difficult, emotional, and confronting issues. Moreover, respondents were still uncertain about the outcome of the process and felt insecure about their answers:

R: So confusing, like scared and these things. You feel lot of things at that moment. Yeah. Like, because you don't understand like how is it going. You just there like having question and just like give answer. And like you don't know this answer is going to be good for them or no. If it is true, you still confusing, like is they going like it or no. Yeah, like I'm the one he ask them. So it's. . .  
(R21: Boy, unaccompanied, from Yemen)

Another girl similarly explained:

R: So I thought: okay, they are asking something, so I'll just answer. They went really deep, very deep. So I just sort of, so when I heard way too many details, that they want to know that, I had more stress like: okay, I don't know this. And you ask this, do I have to know this? Because I was like: okay, I don't know the answer to this question, but I should know to. . . help you, or? So I was usually like: I actually don't know, I can't remember it, I didn't pay attention to it, I don't know.

I: So you did say: I don't know, when you didn't know.

R: Yes, I said that a lot, and that's why I thought: okay, shit, is this going alright?

(RS: Girl, accompanied, Palestine)

Most respondents indicated that they understood the questions that were asked during the interview, with the help of an interpreter. However, many respondents also indicated that they did not always understand the reason why certain questions were asked. They explained that many detailed questions were asked, and sometimes they did not have an exact memory of a certain place or event. One boy explained:

R: Like if they ask, they are right, but sometimes like yeah, you feel it, 'oh what did they ask a lot' and 'why they asking these questions'. Like some questions like funny. Like they ask you, like 'how many, like window in the room', like when you tell a story and you are in room, he ask 'how many window in the room'. So, like what is this question, like. . .

I: Yeah.

R: Yeah so this question was confusing.

I: And you have to remember?

R: Yeah go back again, like what is it, how is it. So that's, this question was like weird question.

(R21: Boy, unaccompanied, from Yemen)

Also, several respondents explained that the same question was asked to them multiple times, but in different ways. This made them feel even more insecure and confused about how they should answer and whether what they said was beneficial for a positive outcome. One girl noted:

R: Okay, so one thing, she asked me a question. And she asked me again, but in a different way.

I: Okay.

R: And she asked it again in a different way. So it is like, made your mind mixed up and missing more.

I: So it was not very helpful?

R: No, it's like, she asked me like 'When did you come to the Netherlands?', like okay, like I was living in Malaysia, I studied in Malaysia and she was like 'You came to Malaysia in 2015?' or something like that and I say 'Yes!' and then after a couple two minutes 'When did you come to Malaysia?'

(R10: Girl, accompanied, from Yemen)

Some respondents indicated that they had to provide evidence to the immigration authorities and that their honesty was being questioned. Nevertheless, several respondents felt ambivalent about telling everything in the interview and they explained that they choose not to say certain things or just to give the information that was asked of them, with no extra details:<sup>79</sup>

R: No, I only do what the person asks me. Yes, that is everything, I think, because I, when I tell a little more, maybe something goes wrong. I feel a little scared.

(R11: Boy, accompanied, from Yemen)

For the accompanied children who were interviewed separately from their parents, they felt that they were put in a difficult position. They knew that their parents were asked the same questions and they felt stressed about giving different answers, which could have a negative consequence for their application. One girl observed:

R: I was really scared, because I thought, now they have interviewed me, I have said something about mom, about dad, about the story and when a decision comes and I did not remember correctly, give the right information, then I am responsible for the decision. And the feeling of: I am responsible for something and I am still fifteen, I am responsible for the future of everybody, that was really terrible. Yes, so that was one of the reasons that I was stressed. So, imagine I tell something incorrectly, then I will feel guilty after, like: was it because of me that they said no? [...] Yes, then I would be really stressed, like: okay, it is my fault, so I was guilty that. . .

79 See also Kohli, "The Sound of Silence: Listening to What Unaccompanied Asylum-Seeking Children Say and Do Not Say".

(R5: Girl, accompanied, from Palestine)

Another girl explained that in her opinion, and according to the family's lawyer, the immigration officer had asked her for too much detailed information and her lawyer later explained to her that this was not allowed. The accompanied children who were interviewed expressed the opinion that if they had a choice, they would rather not be interviewed by the immigration authorities.

### 4.3. The outcome of the asylum procedure

When the interviews were finished most respondents felt relieved and happy that it was over. However, at the same time they still felt insecure and nervous about the outcome of the procedure and whether their asylum application would be granted. Several respondents felt that waiting for the outcome, but also the waiting time before the asylum process started, was burdensome to them. One boy explained:

R: Yes, I had a feeling that I maybe said something, so to say, that I shouldn't say or that I said incorrectly, so to say. So stress again. Yes.

(R9: Boy, unaccompanied, from Afghanistan)

When receiving a positive response from the immigration authorities the respondents all felt happy and relieved about receiving a residence permit. Most indicated that they received the news from their lawyer, child protection officer, parent or other family member. Some also received a letter or e-mail with the formal decision in Dutch. The lawyer or child protection officer helped them to translate the letter, but they also used Google Translate to understand the content of the decision. Most respondents explained that they could ask questions about the decision to the lawyer, child protection officer, a representative of the reception centre or DCR. However, mostly they indicated that they did not have many questions and were not really interested in the formal legal details. What mattered to them was the fact that they could stay and build a new life in the Netherlands:

R: No, yes I heard that, I believe they said: a stay of five years and you can extend it when it expires. But for me, at that time, that was not interesting information. I thought: yes, okay, it is either yes or no, and it is a yes, fine, done.

(R5: Girl, accompanied, from Palestine)

## 5. CONCLUSION AND IMPLICATIONS

The results of this study reveal that, consistent with previous research, unaccompanied, separated and accompanied refugee children perceive the involvement in the asylum procedure as burdensome and stressful.<sup>80</sup> Although they indicated that they received information before the start of the procedure, they had little knowledge concerning what to expect from the actual asylum interview and their role therein.

80 See also Chase, "Transitions, Capabilities and Wellbeing: How Afghan Unaccompanied Young People Experience Becoming 'Adult' in the UK and Beyond".

Children indicated that they received information from multiple sources, however, this did not always contribute to feeling better prepared or more secure about the outcome of their case. Their feelings of stress continued throughout the proceedings and were sustained by ignorance about the reasons behind questions that were asked during the asylum interviews, the fact that the same questions were repeatedly asked, and the quality of translations by interpreters. The results show that on the part of the children a good deal of uncertainties existed, which negatively impacted their feelings of control over the situation.<sup>81</sup> Moreover, for most children, the aspect of time and waiting (for the procedure to start and for the final outcome to arrive) added additional layers of stress. As Allsopp, Chase, and Mitchell explain, time (e.g. lengthy processes) is a form of state control, that never seems to be on the side of the child, which ultimately causes frustration and a lack of control.<sup>82</sup> Moreover, once a positive response was received (i.e. a residence permit), most respondents were not interested in the legal reasoning and specific details of the decision, with their focus shifting to building their future life in the Netherlands.

This study also shows that despite the stressful situation the respondents found themselves in, they were able to exercise some forms of control or agency during the process. They made deliberate choices about what to tell (and not to tell) the immigration officer, some even denied access to the interview to certain people or asked for the interpreter to be replaced. The respondents were also critical about the support that was available, with several feeling they did not need any support person during the interview. This shows that some children had a clear goal in mind, that of, being able to stay in in the Netherlands and to apply for family reunification, for which they did not seem to need the support from outsiders. This is in line with the idea that refugee children possess and display agency and are capable of making choices, which in turn can give them a sense of control over the situation.<sup>83</sup>

A third main finding emanating from this study is the difference in perceptions between unaccompanied and accompanied children. As expected, accompanied children did not receive separate information or representation and were dependent on their parents in this regard. Moreover, accompanied children who were interviewed separately from their parents, felt this as particularly burdensome. This was caused by the fact that they suspected that their answers would be compared to their parents' and they feared that when not providing the same answers this could have negative consequences for their applications. Therefore, if they had a choice, they would rather be not interviewed. This also shows that children do not have coherent knowledge on how their story is weighted against their parents'. Previous research has shown that immigration officials in the Netherlands indicate that they engage in credibility assessments, however, these

81 See Allsopp, Chase & Mitchell, "The Tactics of Time and Status: Young People's Experiences of Building Futures while Subject to Immigration Control in Britain".

82 Allsopp, Chase & Mitchell, "The Tactics of Time and Status: Young People's Experiences of Building Futures while Subject to Immigration Control in Britain"; see also Iraklis, "Move On, No Matter What . . . Young Refugee's Accounts of their Displacement Experiences".

83 See Allsopp & Chase, "Best Interests, Durable Solutions and Belonging: Policy Discourses Shaping the Futures of Unaccompanied Minors Coming of Age in Europe".

are less strictly applied in the case of children and they do not confront children with minor inconsistencies in their statements compared to their parents'. However, the children interviewed were not aware of this and one respondent even claimed that the family's lawyer had said that too many detailed questions were asked during her interview, implying that she was not treated according to the rules. Interestingly, immigration officers do not always see the added value of interviewing accompanied children, especially when the story of the parents is clear and the child does not have independent asylum motives.<sup>84</sup> By not giving accompanied children the *choice* to take part in an interview, they are potentially less able to exercise their agency, compared to unaccompanied children.

The key question guiding this research is whether refugee children have the possibility to meaningfully participate in asylum application proceedings in the Netherlands, as required by international children's rights law and standards? Going back to the main criticism of child participation, that in many instances it is rather tokenistic in its application, this study shows that the participation of refugee children in asylum application proceedings goes beyond the sole problem of tokenism. Refugee children are involved in a judicial or administrative procedure that does not aim at making a decision that truly involves the voice and opinion of the child on the case. On the contrary, as explained in earlier work, the objective of the procedure is truth-finding and making a credibility assessment of the child's story and asylum motives. The asylum procedure can be characterised by a power imbalance between the state and the applicant, whereby the burden of proof lies upon the applicant to present evidence to prove her claim for refugee protection. The goal of the asylum interviews is not to provide the child with an opportunity to be heard and express her views, rather, the objective is to determine whether the child is in need of refugee protection and to that end, the officer assesses the credibility of the child's story and asylum motives.<sup>85</sup> This shows the inherent tension that exists between implementing the right to be heard and the objectives of the asylum procedure.<sup>86</sup> Therefore, it can be concluded that meaningful participation, in line with the international children's rights framework, is difficult to realise in the context of asylum proceedings. Especially for accompanied children it is difficult to exercise some form of agency during the process. It may even be a harmful experience because they are partly made responsible for the family's application, while still being a minor. Moreover, the added value of interviewing them as part of a family applying for asylum can be questioned. For all children involved in asylum proceedings information provision and preparation should be improved.<sup>87</sup> Individualised best interests

84 Rap, "Betekenisvolle participatie van vluchtelingenkinderen in de asielpprocedure. Het doel van de asielpprocedure, het recht om gehoord te worden en de rol van het kind"; S.E. Rap, "The right to effective participation of refugee and migrant children: views of professionals on hearing children in asylum procedures in the Netherlands" (under review).

85 *Ibid.*

86 See also Stalford, "David and Goliath: Due Weight, the State and Determining Unaccompanied Children's Fate".

87 See also Rap, "The Right to Information of (Un)Accompanied Refugee Children: Improving Refugee Children's Legal Position, Fundamental Rights' Implementation and Emotional Well-being in the Netherlands".

assessments of the child, for example involving issues such as the (legal) support they wish or need and acknowledging their agency and giving some form of control, are lacking.<sup>88</sup> Interviewing refugee children in asylum application proceedings is therefore still a long way from implementing the child's right to be heard in all matters affecting her.

88 See Gill, Allsopp, Burrige, Fisher, Griffiths, Hambley, Hoellerer, Paszkiewics & Rotter, "What's Missing from Legal Geography and Materialist Studies of Law? Absence and then the Assembling of Asylum Appeal Hearings in Europe"; Nunes, "Participation in Child Protection: Empowering Children in Placement Processes".