

# The Right to be Heard of Refugee Children: Views of Professionals on the Participation of Children in Asylum Procedures in the Netherlands



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## ABSTRACT

The UN Convention on the Rights of the Child gives children the right to be heard and to participate in judicial and administrative proceedings. Children are seen as bearers and subjects of rights, instead of passive recipients of protection rights. Refugee children, however, are often depicted as vulnerable human beings who require protection. This article conceptualises refugee children's right to be heard in asylum procedures from a children's rights perspective, in order to gain a deeper understanding of the development and increased prominence in law and practice of the concept of child participation. Through interviews with professionals working in asylum procedures in the Netherlands, it is analysed how the concept of participation is implemented in practice. It is shown that as a consequence of the specific dynamic of the asylum procedure, placing the burden of proof on the child, according significant weight to the child's story and credibility and the power imbalance between the child and the immigration authorities, meaningful participation is difficult to achieve. Especially the position of children accompanied by their parents is pressing in this regard, because they are not granted the same legal safeguards compared to unaccompanied children.

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## KEYWORDS:

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## 1 INTRODUCTION

In children's rights scholarship, the topic of child participation and the child's right to be heard in decision-making has received considerable attention over the past decades (Lundy 2007; Percy-Smith & Thomas 2009; Doek 2020; Horgan & Kennan 2022). The right to be heard (article 12 CRC) is seen as one of the major innovations of the UN Convention on the Rights of the Child (CRC); it did not have a precedent in international law, and there is no equivalent provision for adults (Tobin 2013). Moreover, commentators argue that the right to be heard gives children a vehicle through which they can exercise other fundamental rights (Liefgaard & Sloth-Nielsen 2017). Despite the innovative and progressive character of the right to be heard, academics increasingly raise concerns about this right's meaning and the effectiveness of its implementation in practice (Daly 2017; Lundy 2018; McMellon & Tisdall 2020).

Another major research theme in children's rights scholarship concerns refugee children seeking refuge in another country (see for an overview Brittle & Desmet 2020). Many refugee children around the world have their fundamental rights violated (e.g. the rights to protection against harm and violence, separation from parents, healthy development and wellbeing, etc.). The poignancy of these children's circumstances has led to portrayals of children and their family members as pitiable and vulnerable entities who urgently need the protection and care of others (e.g. states, civil society and citizens) (Flegar 2018; Lems, Oester & Strasser 2020). However, such depictions stray far from the CRC's objective, namely to empower children by giving them rights and entitlements and treating them as active rights holders instead of passive recipients of rights (Thorburn Stern 2015; Giannopoulou & Gill 2019; Brittle & Desmet 2020).

In this article, refugee children's right to be heard and to participate in asylum procedures is conceptualised from a socio-legal perspective, in order to gain a deeper understanding of its implementation practice, in the Dutch asylum procedure. Drawing inspiration from Lundberg and Lind's (2017: 189) observation that analysing children's rights in the migration context is key to understanding 'reproductions and maintenance of discrepancies between rights on paper and rights in practice', I aim to understand how the procedural right to be heard is implemented in practice.

This article will start with a brief overview of the applicable legal standards and empirical research concerning the participation of children in judicial and administrative procedures. After discussing the methodological framework of this study in Section 3, in Section 4 it is sought to define the concept child participation based on the views of professionals working with (un)accompanied refugee children in the Netherlands. The article then proceeds in Section 5 with a critical discussion concerning participation and how it is applied in asylum procedures.

## 2 THE CONCEPT OF CHILD PARTICIPATION

To gain a broader understanding of the concept of child participation, it is important to delve deeper into how this concept has developed over time and has gained increased significance as part of international children's rights discourse and in popular debate. Second, findings from research pertaining to children's participation in judicial and administrative procedures will be presented to further enhance understanding of its implementation in practice.

## 2.1 CHILD PARTICIPATION FROM A CHILDREN'S RIGHTS PERSPECTIVE

When taking a closer look at the history of the emergence of children's rights, it can be observed that throughout the nineteenth century, children and families (particularly from disadvantaged backgrounds) were seen as objects of protection and civilisation efforts by predominantly private (religious) charity organisations (Junger-Tas 2004). In the late nineteenth century, states started developing child welfare programmes and made efforts to extend compulsory education (Marten 2018). The 'child-saving movement' portrayed children as innocent victims of adult behaviour (Moody 2014). In this depiction, children had to be saved from poor living conditions, and the best interests of the child principle was employed to protect them. The image of the child as an object of protection gradually altered in the twentieth century. The view on children shifted away from a paternalistic perception towards one which saw children as active bearers of rights. This ultimately resulted in the adoption of the UN Convention on the Rights of the Child in 1989 (Tobin 2019). The CRC simultaneously highlighted children's dependency and their autonomy (Verhellen 2015). The right to be heard (article 12 CRC) 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 (Vanobbergen 2015; Verhellen 2015).

The right to be heard, as is laid down in article 12 CRC, is part of the broader umbrella term 'participation' and the participatory rights in the CRC (Lundy 2007). 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). Moreover, children's growing capacities should be taken into account in the exercise of their rights (article 5 CRC; article 12(1)). This implies that a balance must be struck between treating children as active agents, who have the right and capacity to exercise their own rights and providing them with protection because of their ongoing development and immaturity (Varadan 2019).

Under the CRC and European migration law, children are defined as persons up to the age of 18 (article 1 CRC; article 2(l) EU Directive 2013/32/EU) and until this age they are entitled to specific protections and safeguards. Children, as adults, have the right to seek asylum when they have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' (article 1A(2) Refugee Convention). In article 22(1) of the CRC, the right of children to seek asylum is acknowledged and a duty is placed upon states to provide 'appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments'. The CRC Committee (UNCRC)<sup>1</sup> provides that all asylum-seeking children, irrespective of their age, must be given access to asylum procedures in a child-sensitive and age-appropriate manner (UNCRC 2005, para. 66; UNCMW & UNCRC 2017, para. 37). Children should have the right to express their views on all aspects of the immigration and asylum proceedings, including the reasons that lead

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<sup>1</sup> The UN Committee on the Rights of the Child is the monitoring body of the UN Convention on the Rights of the Child. Next to monitoring the implementation of the convention it produces authoritative recommendations as to how to implement the provisions of the CRC, in the form of General Comments (Doek 2019). In the field of international children's rights soft law standards, such as General Comments, play a key role in how hard law children's rights provisions are conceptualised and implemented in practice (Smyth 2019).

to the asylum application (UNCRC 2009, para. 123). The CRC Committee also states 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' (UNCMW & UNCRC 2017, para. 37). Moreover, refugee children should understand the procedure and its consequences, have access to age-sensitive information, and decisions should be communicated to children in a language and manner they understand (UNCRC 2005, para. 25; UNCRC 2009, para. 16).

Due to the dynamic nature of the child's right to be heard, the CRC Committee (2009) recommends that states should not establish fixed age limits with regard to the implementation of this right (para. 21). Ideally, there should be an individual assessment of the child to determine whether she<sup>2</sup> is capable of expressing her views in a case (Lansdown 2005). In practice, however, states vary widely in the application of age limits and the assignment of legal capacity to children, also with regard to applying for asylum and being heard in the procedure. This may also depend on whether the child is unaccompanied or accompanied by parents (Rap, Schmidt & Liefgaard 2020).

## 2.2 CHILD PARTICIPATION IN ASYLUM PROCEDURES

Several studies show that children themselves indicate that they value being heard – directly rather than through a representative – in important judicial decisions that affect their lives (Cashmore & Parkinson 2007; Saywitz, Camparo & Romanoff 2010). Research also shows that children who were not listened to felt desperate, frustrated, and losing control over the situation (Bessell 2011; Barnes 2012). Adults may see participation as a stressful experience for children (Van Bijleveld, Dedding & Bunders-Aelen 2015), however, stress often seems to relate to a lack of knowledge regarding the procedure and what the child can expect (Nathanson & Saywitz 2015). A common critique on child participation is that it is a Western construction that is not compatible with non-Western cultural traditions. Ruck et al. (2014: 24), however, state that '[a] dolescents across diverse cultural contexts and settings appear to value opportunities for participation even in those societies that do not emphasise children's rights in practice'. They note that a growing body of empirical evidence shows that young people from diverse cultural backgrounds endorse participatory rights and that a restriction of participatory rights is associated with negative effects on psychological health and adjustment (Ruck et al. 2014).

With regard to refugee children, research shows that it is particularly complicated for them to have their voices heard in an effective and meaningful manner (Kohli 2006; Smyth 2019). Children experience hostile interrogation techniques, feel attacked and intimidated, questions are asked to expose inconsistencies and to question the credibility of the child's story (Stalford 2018; Hedlund 2017; Chase 2013). Immigration officials often do not possess extensive skills which pertain to communicating with children (Doornbos 2006) and young refugees display distrust towards social workers and others who represent the asylum system. In addition, children may aim to protect themselves from distressing memories when sharing their asylum stories (Kohli 2006; Chase 2010). Some scholars argue that the adversarial nature of asylum procedures, as well as the important role that the child's testimony and evidence play in substantiating the asylum application, prevent children's right to be heard from being implemented (Shamseldin 2012). In general, power is unequally distributed in the

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<sup>2</sup> For practical reasons, in this article it is referred to children and adults in the feminine form. Masculine children and adults are to be considered included in the references as well.

asylum procedure and the asylum applicant bears the burden of proof (Dahlvik 2017; Lundberg & Lind 2017). Moreover, parents or smugglers may instruct unaccompanied children to present a certain story to the authorities, in order to increase their chances of being allowed to stay in the country (Kohli 2006).

Accompanied children, who file an asylum claim together with their parents, are often not automatically heard in the asylum procedure. This is the case even though the international standards recommend immigration authorities to hear these children individually as well (Pobjoy 2017). As a consequence, accompanied children are often not informed about the procedure and individual asylum motives by accompanied children are often overlooked (Ottosson & Lundberg 2013; Cederborg 2015; Crock 2015). Some argue that 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' (Lidén & Rusten 2007; Lundberg 2011; Lundberg & Lind 2017: 205; Brittle & Desmet 2020).

In this section, it has become clear that a gap exists between the legal norms (e.g. the right to be heard) and its implementation in practice. In the following sections, I will draw on empirical research conducted in the Netherlands, to further explain this implementation gap.

### 3 METHODOLOGY

This article presents the results of a 3-year study concerning the effective participation of refugee children in the Dutch asylum procedure. Between March 2018–October 2019, semi-structured in-depth interviews were held with 42 professionals working with refugee children. The respondents were selected by means of purposeful sampling; i.e. they work for organisations involved in the asylum procedure and with (un)accompanied children, either as policy officer or as practitioner on the ground (see Table 1). The Dutch Immigration and naturalisation service, Central Agency for

ORGANISATION	FUNCTION	NUMBER
Ministry of Justice	Senior policy officer	1
Immigration and naturalisation service [INS]	Senior advisor Asylum and Protection	1
	Hearing and decision-making officer	7
Central Agency for the Reception of Asylum Seekers	Location manager	2
Guardianship organisation	Policy officer	2
	Guardian	5
Dutch Council for Refugees	Policy officer	2
	Project manager	9
Legal representation	Lawyer	9
Judiciary	Immigration judge	1
	Former immigration judge	1
Children's rights organisation	Policy officer	2
<i>Total</i>		42

**Table 1** Number and background of respondents.

the Reception of Asylum Seekers, the Guardianship organisation (i.e. Nidos), the Dutch Council for Refugees, and the Council for the Judiciary cooperated in providing access to the respondents.

Each participant gave her written informed consent before the start of the interview. Ethical approval was given by the Committee Ethics and Data of Leiden Law School, and the study was conducted in accordance with its guidelines. The interviews were guided by a topic list, prepared on the basis of existing literature and the international children's rights framework. Topics included how, when and by whom information is provided, what methods are used for information provision, which age limits are applied in hearing children, how respondents assess the knowledge and understanding of children, what in respondents' view participation entails, how the outcome of the procedure is explained to the child and collaboration with other professional actors. The interviews lasted between 39 and 101 minutes, with an average of 61 minutes and were held in office spaces of the various organisations or in a public space (e.g. a café). The interviews have been audio recorded and transcribed verbatim. For those who wished, the transcript was sent to them for review.

In terms of data analysis, the transcripts were coded in NVivo, using a code scheme developed by the author. Given the explorative nature of the study, the coding was oriented towards finding emergent patterns in the data. Throughout the results section of this article, illustrative direct quotations from the interviews are included, translated from Dutch into English by the author. Because of the study's exploratory nature, it was not aimed at reaching a representative sample of respondents. Therefore, the results cannot be generalised to a larger population of professionals working in this field. The results give an initial impression of how the concept of child participation is implemented in asylum procedures. It should be noted that the results only provide the perspectives of adults working in the asylum process and not the perspectives of children themselves (see Rap 2022).

## 4 PROFESSIONALS' PERSPECTIVES ON PARTICIPATION OF REFUGEE CHILDREN

The results of this study are structured around two overarching themes. The first subsection discusses the views of professionals on information provision to children in the asylum procedure. The second subsection discusses professionals' views on children's participation.

### 4.1 INFORMATION

When an unaccompanied or separated child arrives in the Netherlands and has been reported to the authorities, she is placed under supervision of a guardian (*Aliens Decree 23 November 2000*, the Netherlands, article 3.109d(1)). In addition, a lawyer is assigned to the child a few weeks before the first interview.<sup>3</sup> The legal guardian and the lawyer should be allowed to attend the interview in which the asylum story and the child's motives for seeking asylum are discussed and should be given the opportunity to pose questions or make remarks at the end of the interview (*Aliens Decree 23*

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<sup>3</sup> Due to waiting times the period of time between registration and the first interview can range from approximately one to more than six months.

November 2000, the Netherlands, article 3.109d (4–5)). In practice, oftentimes the child is not accompanied by a lawyer because the legal aid scheme does not provide compensation for that and also the presence of the guardian or a volunteer from the Dutch Council of Refugees (DCR) is not guaranteed (Rap 2022). Usually different immigration officers conduct the consecutive interviews with the child, and an officer who was not involved in the interviews makes the ultimate decision on whether to admit or reject the asylum claim.

At the registration, the immigration authorities provide brochures with information concerning the asylum application procedure (e.g. registration, age assessment, reception, legal aid, relevant organisations, and what happens after the procedure). When the child is living at a reception centre, she may also receive information from the Dutch Council for Refugees (Rap 2020). DCR emphasised that they have the task to provide legal and procedural information to children and that the guardianship organisation is equipped to provide children with social and emotional support. DCR volunteers also prepare young people for the interviews by making a flight story analysis which can be shared with the lawyer and guardian. Lawyers and guardians, however, indicated that they rarely receive or use any of the information gathered through these analyses. Staff members of the reception centres indicated that they do not have the task to provide children with information. They always refer the child to the guardian, who in turn can also contact the lawyer or DCR. Both lawyers and guardians emphasise to the child the importance of telling the immigration officer a coherent and elaborate story about the flight and reasons for applying for asylum. The respondents explained that they usually work with teenagers, who are not always as interested in engaging in these conversations and who believe that their asylum applications will be successful anyway. Two of the participating lawyers indicated that they stress to the child that it is important to tell her own authentic story. These lawyers felt that it is unethical to advise the child to tell an incomplete story or to only explain as little as possible and wait for the immigration officer's questions. Although most respondents believed that children are sufficiently prepared for the interviews, they generally were of the opinion that more time is needed to prepare the child before the procedure starts. Some lawyers indicated that they use drawings and timelines to explain the procedure.

Immigration officers stated that, when the interview starts, they mainly focus on providing information on the current interview and its purpose. The immigration officers assume that children have been prepared by the lawyer and guardian, though some indicated that they provide children with more elaborate introductions compared to adult applicants. They indicated to give the child insight into the purpose of the interview and the reasons for asking certain questions:

Immigration officer 5: Yes, then you also explain the importance of the asylum story and why I am going to ask all these questions about it. That I want it to be clear and that I do not ask questions to trap someone, but that I ask questions to make the story complete so that if I read it later that I think, oh, now I get it.

The purpose of the interview, from the perspective of the immigration authorities, is to have a clear picture of the flight story and asylum motives in order to assess whether the applicant qualifies for refugee protection.

Respondents indicated that the extent to which a child actually understands the information and impact of the asylum procedure depends on the age, level of development, and level of education. Some respondents indicated that not all lawyers take the preparation sufficiently, seriously. A guardian explained that it is therefore important for guardians to accompany the child to the appointment with the lawyer, to be able to later complement the information given by the lawyer. Moreover, a lawyer highlighted how strongly the interview setting can influence a child:

Lawyer 8: I notice that the instructions you give so to speak are forgotten again the next day. So even if they are well prepared, it is still very difficult to realise what the consequences of certain statements can be and how tricky it is to. [...] They feel the pressure from the questions that the immigration officer asks, that they must do well. You can hardly make clear during that preparatory conversation [...] So they may be well prepared, but that does not always mean that they have it all ready at that time.

A guardian explained that some young people only understand the importance of the asylum interview once they have arrived at the immigration office. Only then do they start to understand what types of questions are asked and realise that they might have not prepared well enough.

The outcome of the asylum procedure can either be a positive or a negative decision concerning the asylum application. In case of a negative decision, the immigration authorities inform the child before the formal decision is taken about the intention to reject the application, and the lawyer can submit a legal opinion against the rejection (*Aliens Act 23 November 2000 (C)*, the Netherlands, article 39(2)). In response to this opinion, the immigration authorities can either change the decision or uphold the rejection. In theory, the final written decision is handed out to the child in person, in the presence of an interpreter and the guardian, at the immigration office. The immigration authorities have the duty to inform the child about available remedies. The reasoning behind the decision is not further explained or discussed. One of the interviewed immigration officers explains the following:

Immigration officer 5: [...] you do not comment on the manner in which that decision was ultimately taken. [...] We also do not want to get caught up in a kind of discussion, yes but I have said that, because that decision is taken, so when you hand it out you focus very much on what is still possible. What I find difficult is that you don't want to give too much hope, that such a child will think then, but now everything will be fine, because the judge will look at it. You focus more on the fact that it is a fair process.

In practice, however, not every child is present on the final day of the procedure to receive the written decision. Rather, many hear about the decision from their lawyer, who receives the written decision or guardian. In practice, the guardian is in closer contact with the child and has the possibility to discuss the decision with the child and can accompany her to an appointment with the lawyer to discuss the legal remedies.

The written decision itself is a legal text, containing technical legal reasoning, which is not adapted to children's level of understanding. One immigration officer reflected on the weight that can be attached to the child's story:

Immigration officer 6: I can tell you that this is quite difficult. Because the opinion of the child is of course the story. I have experienced this and that



is true. And what we will say in some cases, we do not believe that opinion or your story. Because that's usually the reason if you reject it, it's usually because you don't believe it.

For lawyers and guardians, it is challenging to explain to the child why the immigration officer qualified her story as not credible. This is because children believe their story is true and/or they have no other means to prove their story, such as identity documents or other official papers to prove their origins (Dahlvik 2017).

## 4.2 PARTICIPATION

Most respondents were of the opinion that children should be able to tell their story in the procedure and understand what their role is in the procedure. Lawyers and guardians seemed to have a strong opinion on the participation of children, stating that children do not actually, meaningfully participate in the asylum procedure. While children should be able to make a difference by telling their story, these respondents doubt whether this is possible in practice. They also indicated that children themselves do not believe that they are genuinely heard in the procedure:

Guardian 6: [...] And that must feel very unfair for a young person. There is someone in front of me who actually doesn't want to give me a residence permit, because that's how they feel. My guardian probably wants the best for me. There is not one hundred percent trust, but the one I trust more must keep his mouth shut. And those I don't trust can do everything with me.

Immigration officers indicated that the goal of hearing children is to find out what the reasons are for applying for asylum and to determine whether the child needs protection and can therefore be granted asylum:

Immigration officer 2: Obviously, of course, to find out the reason for the asylum application. And ultimately for me, at the end of the conversation I want to make the consideration of, do you need protection, yes or no. That is of course what should be clear at the end of the interview for the person who decides. So that, yes, that is what they come here for, and that is actually the purpose of the conversation.

The majority of respondents indicated that the level of participation largely depends on the age, level of education, and cultural background of the child. Some mention that participation is a Western concept, making it is very difficult to implement it in the asylum procedure. They indicated that children who have grown up in other cultures may not be used to conveying their own views and opinions to an adult. Most immigration officers, on the other hand, explained that they make adaptations to the interview with a child. Such adaptations include explaining the purpose of the interview to the child to put her at ease, making some small talk before the interview starts, adapting the language to the level of understanding of the child and taking breaks more frequently.

### 4.2.1 Age, maturity, and credibility

Unaccompanied children from the age of 6 who arrive in the Netherlands are interviewed by the immigration authorities (Parliamentary papers II 2003/04, 19637,

no. 824, p. 13). Children who are accompanied by their parents have to apply for asylum independently from the age of 15, which means that they are also interviewed (Parliamentary papers II 2003/04, 19637, nr. 824, p. 14; Van Willigen 2003; FRA 2017; 2018). Below this age, the parents apply for asylum on behalf of the child. Lawyers and guardians did not feel that the immigration authorities take sufficient account of a child's age in assessing the child's story. They noted that the authorities place too much emphasis on discovering the truth and assessing the credibility of the child's story. Lawyers and guardians also indicated that expectations are too high regarding children's ability to explain their flight story and asylum motives in detail. Children may provide socially desirable answers in the interview with the immigration officer. Also, they may be asked about details they possibly not know or remember and about inconsistencies in their story. These questions give children the feeling that the immigration officer does not believe them (Van Willigen 2003; Rap 2022).

The Dutch immigration authorities' official policy is to not pressure any child below the age of 12 to tell the truth. For children older than 12, however, authorities aim to uncover the truth by confronting the child with possible inconsistencies. Immigration officers indicated that they have to assess the credibility of the child's story and find out about what the truth is, in order to assess the validity of the child's asylum claim (in line with article 1A(2) Refugee Convention; article 22(1) CRC). In order to do so, they have to ask the child about certain details, and sometimes they must confront her with inconsistencies. Therefore, they find it important to explain to the child what they expect from her and also to explain why they ask certain questions. This need for a complete story also relates to the fact that possibly another immigration officer will take the decision on the asylum claim on the basis of the hearing officer's report. However, the credibility assessment is less strict, compared to adults, this assessment accounts for the age and maturity of the child. An officer formulated this difference as follows:

Immigration officer 2: Of course, it always is a difficult weighting. Yes, then age is of course important, but also the specific background, education, how much knowledge they themselves have of things. But in the end it comes down to, they are asking something here and they have to make it plausible. Because no matter how young they are, we can't just think like, it is correct. It remains really up to them, no matter how young you are.

#### 4.2.2 Accompanied children

Accompanied children form a separate group in the asylum procedure. The immigration authorities interview children over the age of 15 and in exceptional circumstances children over the age of 12, when they or their parents have requested this (*Aliens Circular* 2000 (C) para. C1/2.11). Several respondents indicated that these children, at least until they are 15 years old, are rather invisible in the procedure. In the past, the Dutch Council for Refugees has set up programmes for these children, to inform and prepare them for the asylum procedure in which their family is involved and raised awareness about the fact that accompanied children might have independent asylum motives (Rap 2020). Recently, state policy has changed, meaning that families will be informed about the possibility for children between 12 and 15 years of age to be heard separately about their asylum motives (*Official Journal* 2021, 32590, 23 June 2021). Some respondents, however, indicated that it is not always in the interest of

the accompanied child to be heard by the immigration authorities. Hearing the child might even impose risks, because the authorities can compare the child's story to that of her parents. Any inconsistencies can be brought forward in the final written decision. In cases where the asylum claim is rejected, the child may feel guilt towards her parents (Lundberg 2011).

Immigration officers stated that they do not confront children with minor inconsistencies. However, when the stories of parents and children differ on significant points, they may confront the child. In such cases, the child should have room to explain why she told something differently or did not tell something at all. The interviews of parents and children usually take place at the same time, and immigration officers can meet during a break to discuss the case and possible inconsistencies. Several immigration officers explained that they do not always see the added value of hearing accompanied children, especially when the story of the parents is clear and the child does not have independent asylum motives. A representative of the immigration authorities formulated the dilemma of hearing accompanied children as follows:

Senior advisor Asylum and Protection [INS]: Yes, the first thing that comes to mind is that a child can make its asylum motives known in case he is not represented by a parent. Then of course the question is, if he is represented by a parent, when would it be important for a child to be heard? Because perhaps in an individual case it is better that he or she is not heard, but that a parent represents the interests.

This quote also sheds light on another pertinent issue with regard to this group of children, namely their representation and assistance by professionals in the procedure. Since parents are the legal guardians of these children, they are the ones who should inform them and guide them through the procedure. Compared to unaccompanied and separated children, the legal position and professional assistance of accompanied children is less well developed. DCR has invested in providing information to these children and has the task to be present at the child's interview. However, this attendance at interviews is taken care of by volunteers who have usually not met the child before, and there is not always a volunteer available (Rap 2022). Unaccompanied children are represented and assisted by their lawyer and guardian and, in theory, one of them should be present at the interview.

## 5 DISCUSSION AND CONCLUSIONS

This research aimed at gaining a deeper understanding of the concept of child participation in asylum procedures, in law and practice. Historically, the image of the child developed from an object of protection to an autonomous human being and, eventually, a bearer of rights. This changed thinking about childhood and child participation resulted in the enshrinement of participatory rights – specifically the right to be heard – in the legally binding children's rights convention.

In asylum application procedures, the nature of the procedure and the relation between the various actors involved is influenced by the power imbalance between the state and the applicant. The burden of proof lies upon the applicant to present evidence to prove the claim for refugee protection. With respect to the right to be heard, this means that it is necessary for the child to explain the reasons behind

the application. The current study shows that the goal of the interviews with the immigration authorities is not to provide the child with an opportunity to be heard and express her views per se. Rather, the objective is truth-seeking. To that end, the immigration officer assesses the credibility of the child's story and asylum motives.

From the interviews, it became clear that immigration officers, on the one hand, and lawyers and guardians, on the other hand, had rather opposite views on the participation of children in the asylum procedure. The Dutch immigration authority provides children the opportunity to explain their asylum motives in an interview that should be adapted to their age and maturity. The representatives of the child, however, argued that children cannot meaningfully participate if the process places a disproportionate emphasis on truth-seeking and credibility of the child's story, without sufficiently accounting for the child's age. Based on this study's outcomes, it can be concluded that a discrepancy exists between the presumption of the immigration authority that children can explain their asylum motives in a coherent way and the experiences and perceptions of lawyers and guardians who indicated that this is very difficult for children (Dahlvik 2017). Immigration officers have the difficult task to separate facts from fiction in order to assess whether the child is eligible for refugee protection (Doornbos 2005). However, they generally lack the specialised knowledge, skills, and expertise to communicate with children in a formal interview setting and to safeguard the effective implementation of the right to be heard, hence the implementation gap (Doornbos 2006).

Accompanied children are especially disadvantaged in this regard because they are not supported by (legal) professionals (with the consent of their parents) and officials can compare their story to their parents' (see also Brittle & Desmet 2020). This study confirms the findings by Lundberg and Lind (2017), arguing that children's rights are doubly displaced in migration law. This displacement occurs because accompanied children are not old enough to file their own asylum claim and are not considered as bearers of children's rights either who should be heard and protected. The dynamic in the Dutch asylum procedure is different, however, because accompanied children are heard from the age of 15 and are expected to be able to verify their parents' asylum claim. Moreover, in contrast with the Swedish immigration officers (Lundberg 2011), the Dutch immigration officers are not reluctant to interview these children and use their story to construct the truth. This makes the situation of accompanied children all the more concerning, since accompanied children are less well informed, represented, and assisted in the asylum procedure. As this study demonstrates, the Dutch asylum procedure displaces the right to be heard for both accompanied and unaccompanied children; the burden of proof lies with the child, and immigration officers accord a large weight to her story and credibility in an interview that is not sufficiently adapted to the age and maturity of the child.

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## COMPETING INTERESTS

The author has no competing interests to declare.

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