

13. Vulnerability and Child Participation: A Reflection on the Involvement of Refugee Children in Asylum Procedures

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Abstract The right to participate provides children with a vehicle to overcome vulnerable situations they may find themselves in. This chapter presents the results from an empirical study concerning the participation of refugee children in asylum procedures in the Netherlands. It shows that the nature and goal of the asylum procedure creates a vulnerable situation in which children cannot participate effectively. Refugee children, though, seem to overcome vulnerabilities by showing agency in the procedure.

Keywords refugee children | participation | agency | asylum procedures

13.1 INTRODUCTION

In the past decade, the concept of vulnerability has gained increased prominence in international human rights law, with international and regional standards, supranational bodies and human rights courts referring to this concept.¹ The notion of vulnerability is of relevance to consider specifically in relation to the rights of children because children are often seen as vulnerable by virtue of their age and level of maturity. In the preamble to the UN Convention on the Rights of the Child (CRC), it is noted that “the child, by reason of his physical and mental immaturity,

1 Alexander Timmer, Moritz Baumgätel, Louis Kotze and Lieneke Slingenberg, “The Potential and Pitfalls of the Vulnerability Concept for Human Rights,” *Netherlands Quarterly of Human Rights*, vol. 39(3) (2021): 190–197; Daria Mendola and Alessandra Pera, “Vulnerability of Refugees: Some Reflections on Definitions and Measurement Practices,” *International Migration*, vol. 60(5) (2021); Ana Beduschi, “Vulnerability on Trial: Protection of Migrant Children’s Rights in the Jurisprudence of International Human Rights Courts,” *Boston University International Law Journal*, vol. 36 (2018): 55–85.

needs special safeguards and care, including appropriate legal protection [...].” Tobin has noted that the vulnerability of children appears to have played a crucial role in having adopted a special human rights treaty for children.²

In dictionaries, “to be vulnerable” is often described in terms of susceptibility to injury or mischief.³ In everyday use, being vulnerable has the connotation of being weak and requiring protection.⁴ The term is regularly used in the context of children due to their ongoing and still incomplete physical and emotional development, but also in the context of the law in reference to the mental capacities of people and their ability to participate in proceedings. Unaccompanied refugee children are also often seen as vulnerable victims who are sent away by their parents and are in need of care and protection. However, in current debates around migration, unaccompanied children are not only seen as vulnerable victims but also regularly depicted as fortune hunters or dangerous young men from “safe countries” who are a threat to Europe’s security and social welfare system.⁵ It has been observed that with regard to the treatment of unaccompanied children, a tension is visible between “migration management and the normative imagery of liberal, human rights-respecting states”.⁶

In this chapter, I will first delve deeper into the concept of vulnerability in relation to children and their rights. Specifically, the connection is made between the concepts of vulnerability and participation in judicial and administrative proceedings. Second, I will apply these concepts to the specific situation of refugee children applying for asylum. In the third section, I will present findings of an empirical study concerning the participation of refugee children in asylum procedures in the Netherlands. In the conclusions, I will argue that the nature and goal

2 John Tobin, “Understanding Children’s Rights: A Vision Beyond Vulnerability,” *Nordic Journal of International Law*, vol. 84 (2015): 155–182.

3 *Oxford English Dictionary*. Oxford University Press, 2024.

4 Timmer et al., “The Potential and Pitfalls.”

5 Bella Kovner, Adar Zehavi and Daphna Golan, “Unaccompanied Asylum-Seeking Youth in Greece: Protection, Liberation and Criminalization,” *The International Journal of Human Rights*, vol. 25(10) (2021): 1744–1767; Annika Lems, Kathrin Oester and Sabine Strasser, “Children of the Crisis: Ethnographic Perspectives on Unaccompanied Refugee Youth in and En Route to Europe,” *Journal of Ethnic Migration Studies*, vol. 46(2) (2020): 315–335; Veronika 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*, vol. 8 (2018): 374–383; Claire Fox, Jo Deakin, Jon Spencer and Necla Acik, “Encountering Authority and Avoiding Trouble: Young Migrant Men’s Narratives and Negotiation in Europe,” *European Journal of Criminology*, vol. 19(4) (2020): 791–810.

6 Nathan Wittock, Laura Cleton, Robin Vandevoordt and Gert Verschraegen, “Legitimising Detention and Deportation of Illegalised Migrant Families: Reconstructing Public Controversies in Belgium and the Netherlands,” *Journal of Ethnic and Migration Studies*, vol. 49(2) (2021): 1–21.

of the asylum procedure creates a vulnerable situation in which children are not able to participate effectively.

13.2 VULNERABILITY AND CHILDREN'S RIGHTS

To better understand the concept of vulnerability in relation to children's rights, it is important to briefly consider the changing image of the child in society over recent centuries. The concept of childhood developed from seeing children as "mini-adults", being responsible for their behaviour from a young age, to individuals who had to be educated, prepared for adulthood, and protected against harm. Gradually the attention shifted towards the idea that children required protection due to their inherent vulnerability.⁷ In the second half of the twentieth century, the image of the child began to change, moving the attention towards the autonomy and independence of children.⁸ Following the International Year of the Child in 1979, the drafting process of an international children's rights convention started, which ultimately resulted in the adoption of the CRC in 1989.⁹

Since the adoption of the CRC, children are increasingly seen as holders of rights and participants in decision-making affecting their lives.¹⁰ The CRC gave children several participation rights (e.g., the right to be heard, freedom of expression, freedom of association and peaceful assembly) and played a key role in shaping

7 Eugene Verhellen, "The Convention on the Rights of the Child: Reflections from a Historical, Social Policy and Educational Perspective," in *Routledge International Handbook of Children's Rights Studies*, eds. Wouter Vandenhoe, Ellen Desmet, Didier Reynaert and Sara Lembrechts (London: Routledge, 2015), 43–59; Didier Reynaert, Ellen Desmet, Sara Lembrechts and Wouter Vandenhoe, "Introduction: A Critical Approach to Children's Rights," in *Routledge International Handbook of Children's Rights Studies*, eds. Wouter Vandenhoe, Ellen Desmet, Didier Reynaert and Sara Lembrechts (London: Routledge, 2015), 1–23.

8 Reynaert et al., "Introduction," 1–23.

9 John Tobin, "Introduction: The Foundation for Children's Rights," in *The UN Convention on the Rights of the Child: A Commentary*, ed. John Tobin (Oxford: Oxford University Press, 2019), 2–22.

10 Ton Liefaard and Julia Sloth-Nielsen, "25 years CRC: Reflections on Successes, Failures and the Future," in *The United Nations Conventions on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead*, eds. Ton Liefaard and Julia Sloth-Nielsen (Leiden: Brill Nijhoff, 2017), 1–13; Laura Lundy, "'Voice' Is Not Enough. Conceptualising Article 12 of the United Nations Convention on the Rights of the Child," *British Educational Research Journal* vol. 33(6) (2007): 927–942; E. Kay. M. Tisdall, "Children and Young People's Participation. A Critical Consideration of Article 12," in *Routledge International Handbook of Children's Rights Studies*, eds. Wouter Vandenhoe, Ellen Desmet, Didier Reynaert and Sara Lembrechts (London: Routledge, 2015), 185–200; Nigel Patrick Thomas, "Towards a Theory of Children's Participation," *The International Journal of Children's Rights*, vol. 15(2) (2007): 199–218.

understandings of children as members of a separate social category and as active agents in society.¹¹ However, the CRC simultaneously highlights children's dependency and autonomy.¹² As noted in the introduction, in the preamble to the CRC it is emphasised that children require special safeguards and care in order to protect their fundamental rights. For example, the best interests of the child principle requires states to "ensure the child such protection and care as is necessary for his or her well-being" (Article 3(2) CRC). Moreover, children's growing capacities should be taken into account in the exercise of their rights (Article 5 CRC). This implies that a balance must be struck between treating children as active agents who have the capacity to exercise their own rights and providing them with protection due to their ongoing development and immaturity.¹³ The idea that children are active agents is further substantiated by the participation rights enshrined in the CRC. 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). The views and opinions of the child should be taken into account giving due weight to the age and maturity of the child (Article 12(1) CRC). The CRC further specifies that children should be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 12(2) CRC). The concept of child participation has challenged traditional views on children (i.e., as being dependent and vulnerable) and has questioned hierarchical structures and relations between adults and children.¹⁴ Therefore, the effectiveness of the implementation of child participation depends, in part, on the willingness of adults to share their power over the process with children.¹⁵

The UN Committee on the Rights of the Child (CRC Committee) has further conceptualised the right to be heard in *General Comment no. 12*.¹⁶ The Committee clarifies that when a child is heard, this should take place in a setting that

11 Verhellen, "The Convention," 43–59; Bruno Vanobbergen, "Children's Rights and Childhood Studies: From Living Apart Together to a Happy Marriage," in *Routledge International Handbook of Children's Rights Studies*, eds. Wouter Vandenhoe, Ellen Desmet, Didier Reynaert and Sara Lembrechts (London: Routledge, 2015), 60–76.

12 Verhellen, "The Convention," 43–59.

13 Sheila Varadan, "The Principle of Evolving Capacities under the UN Convention on the Rights of the Child," *The International Journal of Children's Rights*, vol. 27 (2019): 306–338.

14 Tisdall, "Children and Young People's," 185–200; Reynaert et al., "Introduction," 1–23; John Tobin, "Justifying Children's Rights," *The International Journal of Children's Rights*, vol. 21(3) (2013): 395–441.

15 Thomas, "Towards a Theory," 199–218.

16 UN Committee on the Rights of the Child, *General Comment no. 12 (2009) The Right of the Child to Be Heard*, CRC/C/GC/12 (July 20, 2009).

contributes to being able to give his¹⁷ opinion freely. This means that the environment may not be intimidating, hostile or otherwise inappropriate to the age of the child (paras. 23, 34, 60). An important implication of the right to be heard is that the child's opinion should be taken seriously and that the child should be informed about how his opinion was taken into account in the decision-making process (paras. 28, 45; 134(i)).¹⁸ This feedback must ensure that the child has not only been heard by way of formality, but that his opinion has been seriously considered by the decision-making authority (para. 45). Moreover, every child also has the right *not* to exercise their right to be heard – it is a choice, not an obligation (para. 16).

In *General Comment no. 14* the CRC Committee identified a number of elements that should be taken into account when assessing the child's best interests, among which are the child's views and the situation of vulnerability.¹⁹ With regard to the first element, it is mentioned that "[t]he fact that the child is very young or in a vulnerable situation (e.g., has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views [...]" (para. 54). Interestingly, the CRC Committee refers to the concept of a "vulnerable situation". Examples of vulnerable situations are provided in paragraph 75, such as being a refugee or asylum-seeker. The CRC Committee comments that children in vulnerable situations should be entitled to the full enjoyment of all their rights. Moreover, it is specified that "[a]uthorities and decisionmakers need to take into account the different kinds and degrees of vulnerability of each child [...]", preferably by means of an individualised assessment (para. 76). The use of the term "vulnerable situations" shows that the CRC Committee is mindful not to contribute to stigmatising or labelling children based on the situation in which they live.²⁰ This vision on vulnerability is also in line with the idea that the vulnerable situation may be temporary and not an "inherent feature of childhood".²¹

However, despite the innovative and progressive character of the right to be heard, concerns are raised by several scholars about its meaning and effectiveness

17 For practical reasons, in this chapter children and adults are referred to in the masculine form. Feminine children and adults are to be considered included in the references as well.

18 Laura Lundy, "In Defence of Tokenism? Children's Right to Participate in Collective Decision-Making," *Childhood*, vol. 25(3) (2018): 340–354.

19 UN Committee on the Rights of the Child, *General Comment no. 14 (2013) on the Right of the Child to Have His or Her Best Interest Taken as a Primary Consideration (Art. 3, para 1)*, CRC/C/GC/14 (May 29, 2013).

20 See also Timmer et al., "The potential," 190–197.

21 Tobin, "Understanding Children's Rights," 155–182, 169.

in practice.²² A common criticism of child participation is, when involved at all, the *tokenistic nature* of children's involvement.²³ 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.²⁴ She argues, however, that tokenistic ways of collective participation (not in individual decision-making) can sometimes be a starting point and are better than not involving children at all.²⁵ Tobin takes one step back by stating that an emphasis on the vulnerability of children "leads to their objectification and silencing".²⁶ As a result, children are predominantly seen as vulnerable and in need of assistance, and their evolving capacities and agency are easily overlooked by adults. This in turn may lead to a misinterpretation of children's needs, because the child is not asked about his views on the situation and whether he requires specific support or assistance.²⁷

13.3 VULNERABILITY AND REFUGEE CHILDREN

Refugee children are often seen as finding themselves in a "vulnerable situation". In the context of migration law, (unaccompanied) children are also often identified as a vulnerable group.²⁸ Mendola and Pera observe that both in UN and EU standards the vulnerability of migrants "[stems] from inherent individual characteristics such as age, gender or ethnicity, and from external factors that cause the migrants to experience precariousness, discrimination or other negative circumstances".²⁹ The definition of "vulnerable migrants" drafted by the International Organization

22 Lundy, "In Defence of Tokenism," 340–354; Tara M. Collins, "A Child's Right to Participate: Implications for International Child Protection," *The International Journal of Human Rights*, vol. 21(1) (2017): 14–46; Aoife Daly, *Autonomy and the Courts: Beyond the Right to Be Heard* (Leiden: Brill Nijhoff, 2017); Anthony Charles and Kevin Haines, "Engaging Young People as Partners for Change: The UR Community Project," *The International Journal of Children's Rights*, vol. 27 (2019): 140–175.

23 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." Roger A. Hart, *Children's Participation: From Tokenism to Citizenship* (UNICEF, 1992); Lundy, "In Defence of Tokenism," 340–354.

24 Lundy, "'Voice' Is Not Enough," 927–942.

25 Lundy, "In Defence of Tokenism," 340–354.

26 Tobin, "Understanding Children's Rights," 155–182, 171.

27 Tobin, "Understanding Children's Rights," 155–182.

28 United Nations General Assembly (2016) *New York Declaration for Refugees and Migrants*, A/RES/71/1 (September 19, 2016), para. 23.

29 See, for example, Article 20(3) Asylum Qualification Directive, 2011/95/EU; Mendola and Pera, "Vulnerability of Refugees," 3.

for Migration seems, however, to be more in line with current ideas about the concept of vulnerability: “vulnerable migrants are migrants who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care”.³⁰ This reflects the vision that vulnerability does not stem from individual and mostly static characteristics, but from the situation they find themselves in. The other side of the coin, however, is that refugee children are often portrayed as vulnerable and helpless victims who are not able to exercise agency and voice their opinion.³¹ They are seen as victims of migrant smugglers or traffickers, or even their own parents, who are desperate enough to send their children alone to a foreign country. Beduschi shows in her analysis of European Court of Human Rights case law concerning migrant children that the ECtHR uses the vulnerability of migrant children and the best interests of the child principle to emphasise the need for special measures of protection for these children.³² However, Beduschi also recognises that regarding children as a vulnerable group poses risks, such as not taking into account their agency and over-emphasising their dependency upon adults.³³

Refugee children also have the right to be heard, in line with Article 12 CRC. The CRC Committee has indicated that these children should have access to the procedures in a child-sensitive and age-appropriate manner.³⁴ Also, the child should have the opportunity to present his reasons that lead to the asylum application, either filed independently or by a parent.³⁵ The CRC Committee 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”.³⁶

30 International Organization Migration, *Handbook in Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (IOM: Geneva, 2019).

31 Lems et al., “Children of the Crisis,”; Flegar, “Who Is Deemed Vulnerable,”; Mendola and Pera, “Vulnerability of Refugees”; see also Jonathan Herring, “Vulnerability, Children and the Law,” in *Law and Childhood Studies: Current Legal Issues Volume 14*, ed. Michael Freeman (Oxford University Press, 2012), 157–172.

32 Beduschi, “Vulnerability on Trial.”

33 Beduschi, “Vulnerability on Trial.”

34 UN Committee on the Rights of the Child, *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*, CMW/C/GC/3-CRC/C/GC/22, (November 16, 2017), para. 37.

35 UN Committee on the Rights of the Child, *General Comment no. 12 (2009) The Right of the Child to Be Heard*, CRC/C/GC/12 (July 20, 2009), para. 123.

36 CMW/C/GC/3-CRC/C/GC/22 para. 37.

The child's specific reasons for migrating should be taken into account, and child-specific forms of persecution should also be considered by the authorities.³⁷

In reality, however, refugee children experience many barriers to effectively participate in asylum procedures. Asylum application procedures are highly complex administrative procedures that are often not adapted to their capacities and level of maturity.³⁸ However, unaccompanied and separated children³⁹ usually have to go through the same asylum application procedures and asylum interviews as adult applicants. Generally, children lack access to information in relation to the authorities, procedures and access to rights and services.⁴⁰ Moreover, asylum procedures are often described in terms of being adversarial and hierarchical, with a narrow focus on evidence and truth-finding.⁴¹ Several studies have shown that children experience hostile interrogation techniques, that they feel attacked and

37 CMW/C/GC/3-CRC/C/GC/22 para. 37; Jason M. Pobjoy, *The Child in International Refugee Law* (Cambridge: Cambridge University Press, 2017).

38 Ciara Smyth, *European Asylum Law and the Rights of the Child* (New York: Routledge, 2014); Helen Stalford, "David and Goliath: Due Weight, the State and Determining Unaccompanied Children's Fate," *Immigration, Asylum and Nationality Law*, vol. 32(3) (2018): 258–283; Rap, S. E., "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," *The International Journal of Children's Rights*, vol. 28(2) (2020): 322–351.

39 Unaccompanied children have been defined by the UN Committee on the Rights of the Child, *General Comment no. 6 (2005) Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6 (September 1, 2005), para. 7, as "children, as defined in article 1 of the Convention, 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". Separated children have been defined as "children, as defined in article 1 of the Convention, 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" (CRC/GC/2005/6, para. 8). For practical reasons, this article will refer to unaccompanied children; separated children are to be considered under this heading as well.

40 Elaine Chase, "Agency and Silence: Young People Seeking Asylum Alone in the UK," *British Journal of Social Work*, vol. 40(7) (2010): 2050–2068; Rap, "The Right to Information," 322–351; Anna Lundberg and Lisa O. Dahlquist, "Unaccompanied Children Seeking Asylum in Sweden: Living Conditions from a Child-Centred Perspective," *Refugee Survey Quarterly*, vol. 31(2) (2012): 54–75.

41 Stalford, "David and Goliath," 258–283; Julia Dahlvik, "Asylum as Construction Work: Theorizing Administrative Practices," *Migration Studies*, vol. 5(3) (2017): 369–388; Anna Lundberg and Jacob Lind, "Technologies of Displacement and Children's Right to Asylum in Sweden," *Human Rights Review*, vol. 18(2) (2017): 189–208; Lisa 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," *The International Journal of Children's Rights*, vol. 20(1) (2012): 90–121.

intimidated, and that questions are asked to expose inconsistencies and question the credibility of their story.⁴² Immigration officials often do not possess extensive skills which pertain to communicating with children, due to a lack of training and specialisation.⁴³ Furthermore, power is unequally distributed in the asylum procedure between the state and the child, and the child bears the burden of proof.⁴⁴ The child's testimony and evidence play an important role in substantiating the asylum application.⁴⁵ However, unaccompanied children find it difficult to disclose their story to adults,⁴⁶ and they selectively share information with adults and peers, displaying a sense of distrust towards social workers and others who represent the asylum system.⁴⁷

13.4 REFUGEE CHILDREN'S VOICE AND AGENCY IN THE DUTCH ASYLUM PROCEDURE

The results presented in this chapter are based on two parts of a larger research project about the effective participation of refugee children in Dutch asylum

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- 42 Stephanie Rap, "A Test That Is About Your Life': The Involvement of Refugee Children in Asylum Application Proceedings in the Netherlands," *Refugee Survey Quarterly*, vol. 41(2) (2022): 298–319; Grigoropoulos Iraklis, "Move On, No Matter What... Young Refugee's Accounts of their Displacement Experiences," *Childhood*, vol. 28(1) (2020): 170–176; Ruth Brittle and Ellen 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?," *The International Journal of Children's Rights*, vol. 28 (2020): 36–65; Daniel Hedlund, "Constructions of Credibility in Decisions Concerning Unaccompanied Minors," *International Journal of Migration*, vol. 13(2) (2017): 157–172; Elaine Chase, "Security and Subjective Wellbeing: The Experiences of Unaccompanied Young People Seeking Asylum in the UK," *Sociology of Health and Illness*, vol. 35(6) (2013): 858–872; Ravi K. S. Kohli, "The Sound of Silence: Listening to What Unaccompanied Asylum-Seeking Children Say and Do Not Say," *British Journal of Social Work*, vol. 36(5) (2006): 707–721.
- 43 Olga Keselman, Ann-Christin Cederborg, Michael E. Lamb and Örjan Dahlström, "Mediated Communication with Minors in Asylum-Seeking Hearings," *Journal of Refugee Studies*, vol. 21(1) (2008): 103–116; Olga Keselman, Ann-Christin Cederborg, Michael E. Lamb and Örjan Dahlström, "Asylum-Seeking Minors in Interpreter-Mediated Interviews: What Do They Say and What Happens to Their Responses?" *Child & Family Social Work*, vol. 15(3) (2010): 325–334; Nienke 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*, vol. 10 (2021): 275–281.
- 44 Dahlvik, "Asylum as Construction Work," 369–388; Lundberg and Lind, "Technologies of Displacement," 189–208.
- 45 Shamseldin, "Implementation," 90–121; Stalford, "David and Goliath," 258–283.
- 46 Kohli, "Sound of Silence," 707–721; Keselman et al., "Asylum-Seeking Minors," 325–334.
- 47 Chase, "Agency and Silence," 2050–2068.

procedures.⁴⁸ First, results are presented based on observations of first instance asylum application interviews with children held by immigration officers. In total, 13 interviews held between 2012 and 2019 were observed.⁴⁹ Two cases in 2019 were observed by the researcher in person in a video-link room at the office of the Immigration and Naturalisation Service (INS). Of the other 11 interviews, the video recordings were observed. Observing video-recorded asylum interviews and through a live video link had the advantage of not interfering with the interview setting.⁵⁰ The sample of 13 interviews consists of four girls and nine boys. The average age of the children was 9.5 years, ranging from seven to 11 years. Nine of the 13 children originally came from Syria,⁵¹ while the others came from Eritrea, Iraq, Democratic Republic of the Congo (DRC), and Mongolia.⁵² The interviews lasted on average 49 minutes, ranging from 19 to 72 minutes.⁵³ Several immigration officers were observed in more than one interview. Next to the child, the immigration officer and the interpreter, a guardian (N=10) and/or family member (N=4) accompanied the child to the interview.⁵⁴

The second part of this study consisted of semi-structured interviews held with 21 refugee children who had applied or were in the process of applying for asylum in the Netherlands.⁵⁵ Respondents were selected through various methods, such as through a children's rights NGO, a high school for migrant children (International Transition Class), a gatekeeper, and snowball sampling. 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.

48 This work was supported by the Dutch Research Council (NWO) – Social Sciences and Humanities under Grant no. 451-17-007 4135.

49 Ten out of the 13 interviews took place in 2017–2019.

50 See Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2012).

51 Some of these children had resided in other countries before their arrival in the Netherlands, such as Turkey and Lebanon.

52 The older interviews from 2012 and 2013 involved children from DRC and Mongolia.

53 This excluded the one or two breaks that were taken in six out of 13 interviews. The breaks lasted between 2 and 45 minutes. This made the longest interviews take 108 minutes, with a break of 43 to 45 minutes.

54 Other family members were an aunt, grandmother, brother and father. It is not known why the child who was accompanied by his father was interviewed, because normally accompanied children are only interviewed when they are 15 years or older. It was decided to keep this interview in the analysis because it did not substantially differ from the other observed interviews.

55 Between February 2020 and June 2021. See also Rap, ““A Test That Is About Life”” 298–319.

On their arrival, the children were between four 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). The children originally came from Iraq, Iran, Armenia, Russia, Syria, Palestine (Gaza), Afghanistan, Yemen, Turkey, and Jordan.

13.4.1 Child-Specific Elements in the Dutch Asylum Procedure

In the Netherlands, the INS is responsible for administering the asylum procedure. The goal of the asylum procedure is to determine whether the applicant is in need of international protection based on the Refugee Convention, the European Convention on Human Rights, and the Common European Asylum System (CEAS). Therefore, it is expected that the applicant, including children, collaborates with research conducted by the INS (Article 3.113 Aliens Decree; 2.4 Aliens Circular 2000 (C)). Dutch immigration law prescribes that the INS needs to take into account the age, level of development and burden (*sic*) when interviewing a child below the age of 18 (Aliens Circular 2000 (C), the Netherlands, Article 2.11). In addition, it has been laid down by law that “If an educational or psychological examination reveals that a foreign national younger than 12 has problems that impede a further interview, the INS will not conduct a further interview” (Article 2.11; see also Article 3.113 Aliens Decree 2000). Unaccompanied children between the ages of six and 12 are interviewed in a specially designed child-friendly interview room by trained immigration officers and in the presence of an interpreter. These immigration officers usually have an affinity for working with children, and some of them have a social work degree (Aliens Circular 2000 (C), Article 2.11; Aliens Decree 23 November 2000, Article 3.113; Official Journal, 2015, 20705, Explanation part F).⁵⁶ Accompanied children between 15 and 18 years are also interviewed by the INS because they have to file an asylum claim independently from their parents.⁵⁷ Unaccompanied children between 12 and 18 years and accompanied children between 15 and 18 years are interviewed in the regular interview rooms that are also used for adults.

56 All immigration officers who interview minors have completed the EASO modules Interviewing techniques, Interviewing children, and Interviewing vulnerable persons, as well as the INS course Interviewing unaccompanied children of 6–12 years.

57 Note that accompanied children below the age of 15 are not interviewed as part of the asylum application procedure of their parents. Exceptionally, accompanied children between 12 and 15 can also apply for asylum independently from their parents, when they have child-specific asylum motives, and, that being the case, they are also interviewed, *Parliamentary Papers II* 2003/04, 19637, no. 824, 14; Aliens Circular 2000 (C), article 2.11.

When an unaccompanied child arrives in the Netherlands and reports to the authorities, he is immediately placed under the supervision of a legal guardian (i.e., a child protection officer employed by the guardianship organisation for unaccompanied minors, Article 3.109d(1) Aliens Decree 23 November 2000). In addition, the child is assigned a lawyer, and information about the procedure is provided by the guardian, the Dutch Council for Refugees, and the lawyer (Article 2.2 Aliens Act Implementation Guidelines 2000 (C); Article 3.109(2) and Article 3.108c(2) Aliens Decree 2000). The first interview takes place at the registration phase, and unaccompanied children are asked about their personal details and family composition (Article 2.11 Aliens Act Implementation Guidelines 2000 (C)). After registration, unaccompanied children have the right to a rest and preparation phase of three weeks (Article 3.109(1) Aliens Decree 2000). The purpose of the second interview is to identify the asylum narrative and flight motives of the child (Article 2.11 Aliens Act Implementation Guidelines 2000 (C)).

13.4.2 Interviewing Refugee Children below the Age of 12

In the Netherlands, asylum application interviews with children below the age of 12 take place at one location of the INS, where a specifically designed child-friendly interview room is designed, modelled after police interview rooms for child victims. The room is equipped with audio-visual recording equipment, and a video link is established with another room, where the guardian can observe the interview. The interview room of about 30 m² has a raised stage in the corner, a table with office chairs and a high children's chair, a separate desk with a computer, a cupboard with toys and tools, and a chalkboard. During the interview, special aids and tools can be used, such as puzzles depicting means of transport, a folder with photos of different countries, icons (for example, of family, religion, school and travel), and dots on the stage that can be used to depict the journey. The results of the observations of the interviews will be organised around three main themes: 1) the preparations and explanations provided to the child by the immigration officers, 2) the conversation techniques used by immigration officers, and 3) the content of the interview and the types of questions asked.

Preparations and Explanations

In most observed cases, an explanation was given to the child about the audio-visual recording (eight out of 13) and the video-link room (nine out of 13). Next to this technical explanation, the immigration officer should explain the

procedure of the interview and verify whether the child understands the interpreter. In 11 out of 13 of the observed cases, the child was asked if he understood the interpreter. The procedure of the interview itself, the aim of the interview, the role and expectations of the child, ground rules, and breaks, were not explained very extensively in most cases. Only in four cases did the interview contain an elaborate introduction. At the closure of the interview, it was observed whether explanations were given regarding the follow-up of the interview, with regard to the procedure and the decision that needs to be taken. However, usually the closure only contained some brief comments about the fact that the immigration officer would make a report of the interview and send it to the child's lawyer. The confusion among children about the intention and purpose of the interview often also became clear at the end of the interview, when children asked the immigration officer why they had the interview and if they could stay in the Netherlands. The following quote shows that the purpose of the interview was not fully clear to the child:

IO: Is there anything else you want to tell or ask?

C: Why am I here?

IO: Everybody who wants to stay in the Netherlands comes here. We always want to hear from the people themselves. Everybody gets a conversation, including children.

C: Can we stay?

IO: That will be decided soon. Do you understand?

C: Can my mother come here from Syria?

IO: That is the next step. Your guardian can explain all about that.

C: If we cannot stay, do we have to go back? (Interview 2, 10-year-old boy from Syria)

Conversation Techniques

During the interviews it was observed that immigration officers used certain conversation techniques, such as metacommunication, small talk, complimenting the child, summarising, and bringing the child back to reality, to adapt the interview to the level of maturity and conversation skills of the child. Most immigration officers explained that the child should say "I don't know" in case he did not know the answer to the question and should say it when he does not understand something that is asked. Sometimes during the interviews immigration officers gave feedback when a child did not know an answer or stayed silent:

IO: Do you know how old your father is?

C: No

IO: That is very good, if you don't know you can just tell me and you don't have to make something up. (Interview 3, eight-year-old boy from Syria)

Next to the usage of conversation techniques, immigration officers could also make use of the aids and tools that were available in the child-friendly interview room. Tools were used in half of the interviews. Most involved pencil and paper, such as when the child was asked to draw a map. In one case the blackboard was used to visualise the places where the child had lived. In another case the podium with dots in the carpet was used, explaining with every step to which countries the child had travelled.

Content of the Interview

The main part of the interview revolved around the child's asylum story, with questions to verify where the child came from, why he was seeking asylum, and whether the child was in need of international protection. Moreover, the child was asked in detail about his situation in the country of origin, whether he was in school, what he usually did during the day, what kind of house the family lived in, and the different places and countries the child lived in. Also, questions were asked about parents, siblings and other family members: their names and age, what kind of work they did, where they lived and where they were currently residing, and if they were still in contact with the child. For example, questions were asked about birth places and places of residence of (grand)parents:

IO: Do you know where your dad was born, in what city or village in Syria?

C: I don't know. Maybe he was born in X, but I don't know in which city.

IO: Do you know where the dad and mum of your dad live?

C: I don't know where they live. (Interview 3, eight-year-old boy from Syria)

The interviews also contained questions about the child's fleeing to the Netherlands, what means of transportation the child used, with whom he travelled, in which countries he had lived, and whether the child knew what a passport was. In order to verify whether the child is a refugee or otherwise in need of international protection, a question that was always posed was why the child had left his country of origin and whether that was connected to, for example, violence or war. The questions posed required the child to have detailed knowledge about his parents or other family members. Also, abstract topics were discussed, such as ethnicity, and

the immigration officer did not verify whether the child understood the notion of ethnicity:

IO: You were born in Syria, a very big country. There are different groups of people living there, Syrians, Kurds, Palestinians. Do you know which group of people you belong to?

C: I am Syrian. (Interview 3, eight-year-old boy from Syria)

It was observed that immigration officers relied heavily on closed-ended questions (e.g., “do/did you”), which were often factual by nature and highly detailed. Doornbos observed in her study involving adult asylum applicants that they had “great difficulty with the emphasis on facts, names, places, and dates”.⁵⁸ Moreover, applicants are expected to know about the geography or political situation in their country of origin, with a lack thereof often being seen as an indicator of incredibility, which plays an important role in assessing the asylum application.⁵⁹ It was also observed that many open directive questions were asked. These are questions that refocus the child’s attention on details or aspects of events that he has already mentioned, providing a category for requesting additional information using “wh-” questions.⁶⁰ In many instances the child was not able, however, to provide an answer, because he might not have had such detailed knowledge. Also, questions concerning the reasons for fleeing were predominantly posed in the “why” form. This can be difficult for the child to answer for various reasons.

IO: The war in Syria has been going on for a long time, at one point you left, do you remember why you left at a certain moment, did something happen or why did you leave?

C: Nothing happened, but to make sure nothing would happen to us, we left. (Interview 8, 10-year-old girl from Syria)

The child is asked to explain why he has left his home country, implying a form of accountability or responsibility for his actions or even the decisions made by others, such as parents. Moreover, young children cannot fully understand causal

58 Nienke Doornbos, “On Being Heard in Asylum Cases: Evidentiary Assessment through Asylum Interviews,” in *Proof and Credibility in Asylum Law*, eds. Gregor Noll and A Popovic (Leiden: Nijhoff, 2005), 103–122, 120.

59 Dahlvik, “Asylum as Construction Work,” 369–388.

60 Keselman et al., “Mediated Communication,” 103–116, 106.

relationships, which are often asked about when using a “why” question,⁶¹ which makes it difficult for them to provide an answer to these questions.

13.4.3 Interviewing Refugee Children Between 12 and 18 Years

Unaccompanied children between 12 and 18 years largely follow the same steps in the asylum procedure as adults. Based on the interviews with young migrants, it can be concluded that refugee children perceive the involvement in the asylum procedure as burdensome and stressful.⁶² 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. 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)

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 perceived poor 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.⁶³

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 [...] 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. (R5: Girl, accompanied, Palestine)

61 Martine F. Delfos, *Luister je wel naar mij? Gespreksvoering met kinderen tussen vier en twaalf jaar oud* (Amsterdam: SWP Uitgeverij, 2009).

62 See also Elaine Chase, “Transitions, Capabilities and Wellbeing: How Afghan Unaccompanied Young People Experience Becoming “Adult” in the UK and Beyond,” *Journal of Ethnic and Migration Studies*, vol. 46(2) (2020): 439–456.

63 Jennifer Allsopp, Elaine Chase and Mary Mitchell, “The Tactics of Time and Status: Young People's Experiences of Building Futures While Subjects to Immigration Control in Britain,” *Journal of Refugee Studies*, vol. 28(2) (2014): 163–182.

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.⁶⁴

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)

The results show that despite the stressful situation the children 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.

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?

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. (R6: Girl, unaccompanied, from Syria)

This shows that some children had a clear goal in mind, that of being able to stay in the Netherlands and to apply for family reunification. 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.⁶⁵ The results also show that they made deliberate choices about what to tell (and not to tell) the INS; some even denied access to the interview to certain people or asked

⁶⁴ See also Kohli, "The Sound of Silence," 707–721.

⁶⁵ Jennifer Allsopp and Elaine Chase, "Best Interest, Durable Solutions and Belonging: Policy Discourses Shaping the Futures of Unaccompanied Minors Coming of Age in Europe," *Journal of Ethnic and Migration Studies*, vol. 45(2) (2019): 293–311.

for the interpreter to be replaced. Moreover, this contrasts with the image of the refugee child as a vulnerable victim who is not able to have any influence over the situation.

13.5 CONCLUSIONS

In this chapter the concept of vulnerability has been applied to the context of refugee children, who are involved in asylum procedures. To avoid stigmatisation of groups of children, the CRC Committee uses the notion of “vulnerable situation” in which children can be found. This takes into account the temporary and contextual nature of vulnerability. However, in the context of migration law, children, among other groups of refugees and migrants, are often seen as an inherently vulnerable group. In mainstream discourse, refugee children are depicted either as helpless victims or as a threat to Western society. In both instances, seeing and treating children solely as being vulnerable and in need of help or a threat carries with it the risk of not listening to them. In that sense the child’s right to be heard and to participate can be at jeopardy when regarding them this way.

In the second part of this chapter, empirical research into the participation of refugee children in the Dutch asylum procedure has been presented. It has been shown that because of the nature of asylum procedures, it is rather difficult for children to participate therein. In the case of unaccompanied children seeking asylum, their story plays a crucial role in the assessment of their asylum application.⁶⁶ The goal of the asylum procedure is to determine whether the child is in need of international protection and therefore the child’s identity and asylum motives need to be investigated. Truth-finding is an important element of the procedure, which determines the content of the questions asked. Based on the observations of asylum interviews with young children it can be concluded that, despite the adapted environment, it is very difficult for immigration officers to have a meaningful conversation about these difficult and abstract topics. The observations revealed that many children did not understand the purpose of questions, were not able to give detailed answers, and were lacking knowledge concerning the implications of the interview. Thorough explanations of the aim of the interview, ground rules for the conversation, what was expected from the child during the interview, and explaining the follow-up procedure after the interview were all lacking. Also, immigration officers did not devote much attention to verifying whether the child understood the explanations provided. The interviews with

66 Smyth, *European Asylum Law*; Stalford, “David and Goliath,” 258–283.

older children about their experience with the asylum interviews underpin these findings, indicating the precarious situation they find themselves in.

The goal of the Dutch asylum interview seems not to provide the child with an opportunity to be heard and express his views; rather, the objective is to determine whether the child is in need of refugee protection, and to that end, the immigration officer assesses the credibility of the child's story and asylum motives. Moreover, the asylum procedure can be characterised by a power imbalance between the state and the asylum applicant, whereby the burden of proof lies upon the child applicant to present evidence to prove his claim for refugee protection.⁶⁷ However, the results also show that children are in fact able to exercise some forms of agency and control in this situation, by making deliberate choices and requests to the INS. This confirms the assumption that vulnerability is not an inherent characteristic but a consequence of the situation in which these children find themselves. However, for some groups of children, such as young children, exercising agency might be even more difficult to realise.⁶⁸ This warrants critical reflection on the role and involvement of children in asylum procedures, specifically young children. In general, procedures could be improved, to better align with the age, maturity, and situation of refugee children.

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67 Dahlvik, "Asylum as Construction Work," 369–388; Lundberg and Lind, "Technologies of Displacement," 189–208.

68 Brittle and Desmet, "Thirty Years of Research," 36–65; Nick Gill, Jennifer Allsopp, Andrew Burridge, Dan Fisher, Melaine Griffiths, Jessica Hambley, Nicole Hoellerer, Natalia Paszkiewicz and Rebecca 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*, vol. 45 (2019): 937–951.

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