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

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Abstract

Refugee children often find themselves in a vulnerable position; they have experienced trauma and mental health problems and in the host country they are involved in a complex and adult-oriented asylum application procedure. International and European legal standards urge states to adapt migration procedures to the age and maturity of children and to make these more child-friendly. In this article, the core concept of analysis is the child's right to information. It will be shown that this right is closely connected to other children's rights and concepts, such as access to justice, child-friendly justice and the right to participation. The implementation in practice of the right to information in the asylum procedure in the Netherlands will serve as a case study, to show the precarious information position of both unaccompanied as well as accompanied refugee children. The results of this study show that the information position of these children can be improved, which will benefit their legal position, emotional well-being and possibilities to exercise their rights.

Keywords

refugee children – right to information – child-friendly justice – asylum procedures – child participation

1 Introduction

Refugee children¹ find themselves in a precarious information position. Recent studies indicate that refugee children are not sufficiently enabled to participate in the predominantly adult-oriented asylum procedures (European Union Agency for Fundamental Rights, 2016; Mannion, 2016; Smyth, 2014). Information about the asylum procedure and the rights of refugees and asylum seekers is generally aimed at adults. When children are accompanied by parents or other caretakers it is often assumed to be sufficient when the adult is informed and heard within the procedure (ENOC Taskforce children on the move, 2016; Cederborg, 2015; Crock, 2015; Lansdown, 2010). Children, in particular, experience a serious lack of information before and during their journey to the host country, regarding the journey itself, the authorities, procedures and access to rights and services. Also, children indicate that upon arrival they are overwhelmed and were not able to process information or were not given adequate information at all. Exchanges and communication with peers were seen as a reliable way of getting access to information, from those they trusted (Council of Europe, 2018; UNHCR Netherlands, 2019; UNHCR, 2014; Chase, 2010; Kloosterboer, 2009). In general, children who are involved in judicial proceedings (including asylum procedures) do not always believe that they receive sufficient and child-friendly information, that would enable their participation and understanding of their rights, the procedures and the actors involved. Moreover, information and feedback on the outcomes of the process and the involvement of the child therein are often lacking (UNHCR Netherlands, 2019; Van Hoorde *et al.*, 2018; Collins, 2017; FRA, 2017; Kilkelly, 2010). The specific vulnerability of refugee children is apparent in the fact that many of these children experience mental health problems, such as depression, anxiety and post-traumatic stress (Bean *et al.*, 2007; Derluyn and Broekaert, 2007). Moreover, the asylum application procedure itself can actually contribute to further traumatising and uncertainty about the immigration status and can pose a great burden and feelings of concern on children (Darmanaki Farahani and Bradley, 2018; Chase, 2013; Kohli, 2006a). It has been shown, however, that informing people and having them participate in the process of integration empowers them and helps them to regain control over their life (Valenta and Berg, 2010; Chase, 2013).

1 In this article it is chosen to refer to refugee children as all of them who apply for asylum in a receiving country, whether they flee conflict or persecution or are seeking international protection on other grounds (see also CRC Committee 2005, para. 18). The terms “child” and “minor” are used interchangeably and when meaning persons up to the age of 18 (in accordance with art. 1 CRC).

In the context of children in migration it is of importance to distinguish between unaccompanied and separated, and accompanied children, and to recognise both groups of children as rights holders (Thorburn Stern, 2015). The first group of children lacks the protection of a primary caregiver and is entitled to protection from the receiving state. They usually file their own asylum application, that should be assessed by the immigration authorities (UNHCR/UNICEF, 2014; Rosani, 2020). The second group of children depends upon the asylum claim filed by the family, which means that they are not always actively involved in the process and their own interests in applying for asylum are not assessed (Thorburn Stern, 2015; Reneman, 2014). In light of the outcomes of previous research that shows the vulnerabilities and weak legal position of refugee children, it is of importance to provide all refugee children with child-friendly and accurate information during the asylum procedure, as part of an effective legal position, their right to information and to enhance their emotional well-being.

Stalford, Cairns and Marshall (2017: 208) argue that although provision of and access to information are crucial in a child rights-based approach, 'there has been surprisingly little attempt to scrutinise the availability, quality, accessibility and value of information about laws and policies affecting children'. These scholars introduce the term, "children's legal literacy", meaning the knowledge and understanding children need of what their rights mean in practice (Stalford *et al.*, 2017, p. 208). They have identified three layers of information on the rights of children. First, they distinguish the layer of 'practical and procedural information', which entails practical information on 'how the legal process works, when and where it will take place, and the roles and responsibilities of the various actors'. The second layer consists of 'foundational rights-based information', which means that children should also be informed about what *should* happen, next to knowing what is likely to happen. Children need to know what their rights are, in order to access and exercise those rights. The third layer contains 'agency asserting information', which means that children can use the information they have received and are able to participate meaningfully in the legal process, because of their understanding through information provision (Stalford *et al.*, 2017: 211–212).

In this article, the information provision to children who are involved in the asylum procedure (either as applicant or as part of a family) is analysed, within the broader scope of the effective legal position of children. The key question that emerges is what the right to information for children entails in the context of the asylum procedure? It is aimed further to conceptualise the right to information for refugee children, who enter the asylum procedure in a receiving country. This will be undertaken by using the Netherlands as an example and by

focusing on differences and similarities between unaccompanied and accompanied children. This study consists of a legal analysis of relevant international and European standards and empirical data gathered as part of a larger study on refugee children's right to participation. In this article will draw on in-depth interviews held with representatives of the Dutch Council for Refugees. First, the international and European legal framework will be discussed. Second, the methodology of this study will be explained. Third, the results of this study will be presented, by focussing on how children receive information and what (un) accompanied children know and understand of the procedure, in the view of professional actors. Fourth, the results are discussed, by relating the outcomes of this study to the layers of information on children's rights as developed by Stalford et al. (2017) and this article will conclude with some final remarks.

2 International and European Legal Standards Relating to Children in Migration

2.1 *Access to Justice and Effective Legal Position of Children*

An effective legal position for children who come into contact with the law and legal procedures requires procedural rights, such as the right to be heard, the right to information and the right to an effective remedy (Rap and Liefwaard, 2017). These procedural rights aim at safeguarding fair treatment, effective protection of rights and access to justice. Access to justice refers to 'the ability to obtain a just and timely remedy for violations of rights' (UN Human Rights Council, 2013: para. 4). This means that states parties need to ensure that children are provided with access to authorities and facilities that can help them to be heard, informed and represented. Also, children must have access to appeals, complaints procedures and an ombudsperson or children's rights commissioner (CRC Committee, 2009: paras. 46–47). Moreover, access to justice should be understood as a procedural (e.g. access to courts, legal representation) as well as a substantive concept (e.g. financial compensation, reparation of damages). The UN High Commissioner for Human Rights has stated that child-sensitive procedures form a prerequisite for effective access to justice for children and that children should be empowered with child-sensitive information (UN Human Rights Council, 2013: paras. 4, 18ff and 21ff; see also CRC Committee, 2003: para. 24; CRC Committee, 2017b: para. 14). The availability of child-sensitive procedures can be seen as a requirement for the child's access to justice (Liefwaard, 2019). The UN Committee on the Rights of the Child (hereafter CRC Committee) explains that in order to enjoy the right to participation in an asylum procedure, states must provide all children access to the procedure

in a child-sensitive and age-appropriate manner, hereby having due regard for the age and evolving capacities of the child (CRC Committee 2017a: para. 35). Specifically, the CRC Committee notes that it is concerned that 'children between 15 and 18 years tend to be provided with much lower levels of protection, and are sometimes considered as adults or left with an ambiguous migration status until they reach 18 years of age'. The Committee urges states to ensure that equal standards of protection are provided to every child until age 18 (CRC Committee, 2017b: para. 3). Especially for children, exercising their right to participation and access to justice is not self-evident and they face challenges in doing so. To make access to justice for children procedurally more child-sensitive or child-friendly, Liefaard (2017) distinguished three elements: child-friendly information, child participation in procedures and child-friendly outcomes and remedies. The first element is the central concept of analysis of this article.

2.2 *The Right to Information and Child-friendly Justice*

The basis for the child's right to information is laid out in article 17 of the UN Convention on the Rights of the Child (CRC): 'states ... shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health'. The right to information has close connections with one of the other participatory rights: the right to be heard (art. 12, CRC). The CRC Committee states that the right to information is essential in this regard, 'because it is the precondition of the child's clarified decisions' (CRC Committee, 2009, para. 25) and that 'children should be provided with full accessible, diversity-sensitive and age-appropriate information about their right to express their views freely' (para. 134(a)). Moreover, the CRC Committee explains that states parties have to ensure that the child receives all necessary information and advice to make a decision in favour of his best interests (CRC Committee, 2009: para. 16; CRC Committee, 2017a: para. 35; see also European Committee of the Regions, 2017: para. 13). It is acknowledged that information should be of a child-friendly nature and adapted to the child's age and capacities (paras. 34 and 82).² Giving child-friendly information makes it possible for the child to form a well-informed opinion (CRC Committee, 2009: paras. 25, 34, 60 and 82; Guidelines on Child-friendly Justice, 2010, part IV, D, 3.48).

2 This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures.

Both the right to be heard and the right to information form important components of the broader concept of child participation in legal proceedings. Moreover, in recent years these rights and principles have been incorporated in the concept of *child-friendly-justice* (Liefwaard and Kilkelly, 2018). Stalford et al. (2017: 208) argue that the provision of information to children is a central component and a 'critical starting point of child friendly justice'. The 2010 Council of Europe Guidelines on child-friendly justice form an important starting point for the further conceptualisation of the right to information. The guidelines depart from the point of view that children should be provided with all information on how to use the right to be heard effectively (part IV, D, 3.48). Child-friendly information means that information must be adapted to the child's age, maturity, language, gender and culture (part IV, A, 1.2). Moreover, 'child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines [should be, *sec*] established' (part IV, A, 1.4). No specific reference is made in this regard to refugee children,³ but it can be assumed that these guidelines are applicable to all children involved in judicial and administrative proceedings (see part I, 2; part IV, D, 89).

The Guidelines on child-friendly justice form an important reference point, both in the supranational bodies of the European Union as well as the Council of Europe, with regard to policy making and standard setting relating to the implementation and safeguarding of children's rights (Stalford et al., 2017; Rap, 2016; Liefwaard, 2016). The 2011 *EU Agenda for the Rights of the Child* identified making the justice systems in Europe more child-friendly as a key priority of the European Commission and the use of the Guidelines on child-friendly justice should be promoted (European Commission, 2011). The Council of Europe *Strategy for the Rights of the Child (2016–2021)* names participation of all children and child-friendly justice for all children as two of its priority areas (Council of Europe, 2016). Specifically with regard to refugee children, both intergovernmental organisations have issued policy documents in which a clear link is drawn between the protection of refugee children and promoting child-friendly procedures and practices. In 2017, the European Commission stated in a Communication to the European Parliament and the Council on the protection of children in migration, that appropriate safeguards must be applied to all children in all stages of the asylum procedure. Access to information, legal representation and guardianship, the right to be heard and the right to an

3 Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions (part III, D, 2).

effective remedy, are named, amongst others, as key protection measures (2017: 9). Moreover, it is recommended that children need to be informed – in a child-sensitive and age- and context-appropriate manner – on their rights, on procedures and on services available for their protection (14). The Council of Europe has furthermore issued its *Action Plan on Protecting Refugee and Migrant Children in Europe* (2017) in which it highlights the importance of access to rights, access to information and child-friendly procedures (1–2). Many of the elements of child-sensitive practices that are brought forward in these documents, touch upon the child's right to information.

2.3 *The Right to Information in the Context of Asylum Procedures*

According to the CRC Committee, refugee children should be provided with information concerning 'their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22(2))' (CRC Committee, 2005: para. 25). This implies that explanations are given of what is expected of the child (where and when he⁴ is allowed to give his opinion, how this will be asked and in what setting) and on the other hand to explain the content of the case concerned, the possible decisions that can be taken and the consequences of those decisions (CRC Committee, 2009: paras. 25 and 45; Guidelines on Child-friendly justice part IV, A, 1(a); UNHCR, 2009: para. 77; Pinheiro, 2015). Moreover, the information should be adapted to the level of maturity and understanding of the child (CRC Committee, 2005: para. 25). Whenever the child is unable directly to communicate with the qualified immigration official in a common language, the assistance of a qualified interpreter should be sought (para. 71). Thus, refugee children must 'be fully informed throughout the entire procedure, together with their guardian and legal adviser, including information on their rights and all relevant information that could affect them' (CRC Committee, 2017b: para. 17(j)).

The UNHCR Guidelines on International Protection (2009) indicate that children should be given 'all necessary information in a language and manner they understand about the possible existing options and the consequences arising from them' (para. 70), among others on the right to privacy and confidentiality and the age-assessment procedure (paras. 70 and 75). It is further recommended to use appropriate communication methods, depending on, among others, the age, maturity, gender and cultural background of the child. Also the use of non-verbal communication methods is highlighted, such as playing, drawing, writing, role-playing, storytelling and singing (para. 71).

4 For the purpose of uniformity it is chosen to refer to persons with "he" or "him", while meaning "she" or "her" as well.

Moreover, children should understand the procedure and its consequences, have access to age-sensitive information about reception, registration, refugee or statelessness status determination and other procedures and services, and decisions should be communicated to children in a language and manner they understand (UNHCR, 2012). Refugee children who are old enough to understand what is meant by status determination should be informed about the process, where they stand in the process, what decisions have been made and the possible consequences (UNHCR, 1994). Finally, children should be informed about the decisions that are taken 'in person, in the presence of their guardian, legal representative, and/or other support person, in a supportive and non-threatening environment' (UNHCR Guidelines on International Protection, 2009: para. 77). In case of a negative decision, particular care should be taken in communicating the message and explaining what are the next steps that can be taken in the procedure (para. 77). The recently adopted Global Compact for Safe, Orderly and Regular Migration confirms that migrants should be provided with 'gender-responsive, child-sensitive, accessible and comprehensive information and legal guidance on their rights and obligations' (2018: para. 19(d)).

To safeguard the right to information, specifically for unaccompanied minors, the appointment of a (legal) representative is of importance. In the European context, it is of relevance to distinguish between the guardian, who is appointed to safeguard the best interests and general well-being of the unaccompanied or separated child, and the legal representative (i.e. a lawyer). The guardian acts as a statutory representative of the child in all proceedings in the same way a parent represents his child and complements the limited legal capacity of the child. The guardian must be accessible to unaccompanied children at all stages of the asylum procedure (FRA, 2015). As a minimum, applicants have to be provided with free legal assistance and representation in asylum appeals procedures (art. 20(1)) and states may also provide asylum applicants with free legal assistance in the procedures at first instance (art. 20(2) EU Directive 2013/32/EU). At the international level, the CRC Committee (2005) recommends that unaccompanied children should only be referred to asylum or other administrative or judicial procedures when they have been appointed both a guardian and a legal representative free of charge (paras. 21, 36 and 69). Moreover, the CRC Committee (2017b) has specified that all children, including those with parents/in parental care, should be appointed a legal representative to provide representation at all stages in the proceedings and with whom they can communicate freely (para. 17(f)).

When an unaccompanied child arrives in Europe, he should be informed of arrangements with regard to guardianship and legal representation at all times

(CRC Committee, 2005: para. 37; art. 25 (1)(a) EU Directive 2013/32/EU). When a representative is appointed, states must ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and how to prepare himself for the interview (art. 25 (1)(b)). Moreover, unaccompanied minors and their representatives must be provided, free of charge, with legal and procedural information (art. 25 (3)(b)). The Asylum Procedures Directive specifically prescribes that unaccompanied minors must be informed prior to age examination of the possibility that their age may be determined by medical examination in a language they understand or are reasonably supposed to understand. This should include information on the method of examination, the possible consequences of the results of the examination for the application, as well as the consequences of refusal to undergo medical examination (art. 25 (5)(a) EU Directive 2013/32/EU).

The EU Directive 2013/33/EU on reception conditions prescribes that asylum applicants must be informed within a reasonable time after they have lodged their application (art. 5(1)). Moreover, they must be provided with information on legal assistance, the available reception conditions, including health care and how to access this (art. 5(1); EASO, 2016). The European Asylum Support Office (EASO) recommends that information should be provided in 'clear and non-technical language', it should also be provided orally (or at least orally in case of illiteracy). In the case of children, 'information is provided in a child-friendly manner (e.g. through use of pictograms, in child-friendly wording, etc.)' (EASO, 2016: 36). Regarding the content, EASO recommends that –

information should include, as a minimum, the right to reception depending on legal status, the form of provision of material reception conditions (housing, food, clothing and daily expenses allowances), access to health care and specific arrangements for applicants with special needs, if relevant. The house rules should be clearly communicated to the applicant. Information could also include the availability of additional psychosocial support, information on social norms within the Member State, advice on daily life, including conflict management, etc.

EASO, 2016: 35–36

In the current legislative proposals to reform the Common European Asylum System (CEAS), the European Commission has included some relevant provisions related to the right to information of children. In the Dublin Regulation (Regulation (EU) No. 604/2013), it is proposed that the Commission draw up a common and a specific leaflet for unaccompanied minors containing

information on the application of the regulation (i.e. the objectives of this Regulation, the criteria for determining the member state responsible, the personal interview, the possibility to challenge a transfer decision, the fact that the competent authorities of Member States can exchange data and the right of access to data) (art. 6(3); recital 47 European Commission, 2016, COM(2016) 270 final 2016/0133 (COD)). Also, in relation to providing information on the application and reception conditions, it is proposed to adapt the information provision to the needs of minors (European Commission, 2016, COM(2016) 467 final 2016/0224 (COD)).

Recent case law of the European Court of Human Rights (ECtHR) shows an interesting connection between access to justice (and access to effective remedies) and receiving adequate information on the asylum procedure, for example in the case of *Rahimi v. Greece* (ECHR, 5 April 2011, no. 8687/08). The applicant, who was an unaccompanied minor seeking asylum at the time, complained, among other things, that he did not receive adequate information for the reasons for his arrest and placement in detention (arts. 5(1), 5(2) and 5(4), ECHR) or of any available remedies in that regard (art. 13, ECHR). The applicant had fled Afghanistan after the death of his parents and upon his arrival on Lesbos, in Greece, he was arrested and detained. He claimed that he had not received any information on the possibility to apply for political asylum, his rights and legal situation, the reasons for his arrest or of any available remedies and that he was not provided with an approved translator. The applicant also complained about the detention conditions and the fact that he was detained together with adults (art. 3, ECHR). The ECtHR confirmed that the information brochure referring to the available remedies in Arabic was incomprehensible for the applicant (who is a native Farsi speaker), that the brochure did not contain information on the complaints procedure to be followed and that the applicant had been unable to contact a lawyer. The Court, therefore, concluded that even though remedies could have been effective, the applicant could not have exercised them accordingly because of his lack of information and legal assistance and a violation of article 5(4), ECHR (i.e. the right to challenge the lawfulness of detention) was found. The main focus of this case is, of course, on the deprivation of liberty of the minor, and the ECtHR concluded that the best interests of the child were not taken into account (art. 3, CRC) and that no alternatives to detention were considered (art. 37, CRC) before placing the applicant in the detention centre. More recently, in the cases of *Abdullahi Elmi* and *Aweys Abubakar v. Malta* (22 November 2016, no. 25794/13 and 28151/13), concerning the immigration detention in Malta of two minors from Somalia, the lack of procedural safeguards and access to information also plays an important role. The two applicants were detained upon arrival in Malta and were given a Return Decision and Removal Order in English. Both applicants

claimed that they did not understand English and that the contents of the decisions were not explained to them. According to the Maltese government the right to appeal was explained verbally and migrants translate for each other in that case. Moreover, an information leaflet in Arabic was given to the minors, although they did not understand that language either. The applicants claimed that they received limited information at the initial stages of the asylum procedure, among other things, about the age assessment procedure, and they did not understand the written information in Arabic. Moreover, they were detained while awaiting age assessment and when they had been found to be minors only released several months later. The Court concluded that the lack of support and information must have exacerbated the fears of the two applicants, that they lacked procedural safeguards and were not provided with adequate information to challenge the lawfulness of their detention and seek remedies. Therefore, violations were found of arts. 3, 5(1) and 5(4). Judge Pinto De Albuquerque confirms in his concurring opinion, in which he provides a reflection upon the Court's case law in light of the current developments around the merging of criminal law and immigration law (i.e. crimmigration), that 'access to legal advice is virtually impossible' for asylum seekers (49).

These cases show the interconnectedness between the concepts of access to justice (i.e. the right to effective remedies), the right to information (i.e. information in a language that one understands and legal assistance) and child-friendly justice (i.e. adapting information to the age and maturity of the child). In relation to children, the latter concept is of vital importance, because understanding information does not only relate to comprehending the specific language, but also understanding the meaning of the information and receiving adequate (legal) support in reaching this understanding and taking the right decision(s). In the present cases the minors were not able to understand the language of the information they were given, and they were not provided with assistance from a legal representative and a qualified translator. This in turn requires trained professionals who are able to provide age-appropriate information in a way that is understandable to the child (CRC committee 2009: paras. 34, 49, 134(a) and 134(g)).

3 Methodology

In this article the first results are presented of a three-year study into the effective participation of refugee children in the Dutch asylum procedure.⁵ This

5 This study has been funded by the Netherlands Organisation for Scientific Research under NWO-VENI Grant no. 451-17-007 4135.

concerns a qualitative and exploratory study of the role and position of (un) accompanied children in the asylum application procedure in the Netherlands (see also Rap, 2019). In the following section, the first results are presented on the specific topic of information provision to these children, as part of their effective legal position.

In the Netherlands, the regular asylum application procedure consists of eight days, in which the immigration authorities decide on the asylum application. The asylum seeker is given a rest and preparation period of three weeks; however, the formal procedure usually starts some months after the arrival of the asylum seeker in the country (art. 3.109(1) Aliens Decree 2000 [*Vreemdelingenbesluit 2000*]; Parliamentary Papers II 2009/10, 27062, 65, p. 2; see also UNHCR Netherlands, 2019). In the case of an unaccompanied or separated child, a guardian is appointed immediately after arrival and registration. Unaccompanied and separated children are entitled to a legal aid lawyer and on the so-called “day minus 1”, the child is prepared by his lawyer to start the process (UNHCR, 2014). The results of this study relate to the initial stage of the asylum procedure, in which the child’s asylum application is pending. During these months the Dutch Council for Refugee (hereafter DCR; *Vluchtelingen-Werk Nederland*) has the official task of informing refugees and asylum seekers about the asylum procedure (para. C2/2.2 Aliens Circular 2000 [*Vreemdelingen-circulaire 2000 (C)*]; art. 3.109(2) Aliens Decree 2000 art. 3.108c(2) Aliens Decree).⁶ The services are mainly provided by volunteers. In 2018, the organisation consisted of 14,500 volunteers throughout the country and they have assisted 55,000 persons in the asylum procedure (VluchtelingenWerk Nederland, 2019).

During the period May-July 2018, semi-structured, in-depth interviews were held with 11 respondents employed by the Dutch Council for Refugees. The respondents were approached through a contact person working at the national office of DCR, responsible for the implementation of projects related to information provision to asylum seeking children. The respondents were selected by means of purposeful sampling; i.e. respondents were selected who are responsible for leading the projects relating to information provision to (un)accompanied children in each region of the Netherlands covered by DCR (North, East, West-Central, South-West, South, and the national office). The respondents had employed between one and 17 years for DCR (on average

6 DCR is an independent organisation, partly funded by the government. Next to information provision DCR also employs other activities, such as accompanying vulnerable persons at the asylum interview, helping people with family reunification and supporting people in their integration into the community once having acquired a residence permit (see: <https://www.vluchtelingenwerk.nl/forrefugees/belangrijke-informatie-je-eigen-taal?language=en>).

5.8 years) and the majority worked for DCR longer than 3.5 years. They were employed as team manager and/or project manager of the relevant projects in their region. Two respondents worked as policy employees at the national office.

Each participant gave his written informed consent before the start of the interview. The interviews were guided by a topic list. This list was prepared by the author on the basis of existing literature and the international children's rights framework concerning participation and information. Topics included how, when and by whom information is provided, what methods are used for information provision, which age limits are applied, how respondents assess the knowledge and understanding of children, what in the respondents' view participation entails and the collaboration with other professional actors. The interviews lasted between 45 minutes and 1.5 hours and were held in office space of DCR or in a public space (e.g. a café). The interviews have been audio recorded and transcribed verbatim.

In terms of data analysis, the transcripts were coded according to 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 have been included, which the author has translated from Dutch into English. Because of its exploratory nature, providing a case study, this research did not aim to reach a representative sample of respondents and, therefore, the results cannot be generalised to a larger population. The results give an initial impression of how the right to information for children in asylum procedures is implemented. 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 also section 5). Whilst children's views and experiences would probably enrich and provide more detail to the analysis, it was decided by the author to present the data collected thus far with the aim of connecting the existing literature, legal standards and case law to the practice as adopted in the Netherlands. In the following, references will be made to the outcomes of previous studies as well.

4 The implementation of the Right to Information in Practice

In this section the results of the interviews will be presented, structured around two main questions: how do children receive information; and what do children know and understand of the asylum procedure? The results are presented separately for unaccompanied and accompanied children.

4.1 *How Do Children Receive Information?*

As stated above, the Dutch Council for Refugees has the task of informing refugees and asylum seekers about the asylum procedure. It does so by providing information through a personal meeting with adult and minor asylum applicants (i.e. unaccompanied children). The information is given orally and in writing (i.e. brochures). In addition, an information video is developed for (un)accompanied children, based on a comic book that is specifically developed for minors.⁷ It concerns information on the asylum procedure and the roles of the different actors involved. Next to providing information on the asylum procedure, the method of 'flight story analysis' (*vlucht verhaal analyse*) is applied, which involves the asylum seeker explaining his flight history to a DCR volunteer. Participating in a flight story analysis is voluntary. The volunteer prepares a written version of the flight story and this will be shared, with the consent of the asylum seeker, with the lawyer and guardian. This method has the purpose of preparing the asylum seeker for the interview with the immigration authority and also provides the opportunity to give the person legal advice and information on the procedure. One of the respondents explains this as follows:

Respondent 10: ... It has a number of goals, the flight story analysis (vva). First, I think it is a very good way for people to really get their story well organised and in chronologically order. Plus that before you start the asylum procedure, you can indicate that, well, that story becomes a lot stronger if you can submit documents. So try to use the time you have to substantiate your asylum story. For the rest, for another reason, the vva also goes to the lawyer. In principle, the lawyer receives it one day minus one, so the first day, one day before they enter the asylum procedure. ... So in principle, a lawyer has very little time to prepare people properly and to ask questions about certain matters. So if they already have a vva from us, they can build on that. So that saves a lot of time. And for us it is a way to adapt our support to the individual.

Previous studies among unaccompanied children have shown that they tend to share information selectively with adults and peers, 'to maintain a sense of agency and control over their lives' (Chase, 2010: 2065). Young refugees display

7 The comic book is titled 'De diamanten van Mudada. Een avontuur in het asielzoekerscentrum' [The diamonds of Mudada. An adventure in the asylum seeker centre]. See for a trailer of the video here: <https://www.youtube.com/watch?v=4ryCZs4AfBE>. Also, a website is developed specifically for children: <https://www.kindertelefoon.nl/tell-me/>.

a sense of distrust towards social workers and others representing the asylum system and they may have been instructed by parents or smugglers to present a certain story to the authorities (Chase, 2010; Kohli, 2006a). The preparation provided by DCR may help children better to understand the procedure and what is asked from them during the interviews with the immigration authorities. Unaccompanied children, however, also indicate that they have to present their story many times and to many different actors, whom they find it difficult to distinguish between (UNHCR Netherlands, 2019; Bruin and Kok, 2015).

Accompanied children below the age of 15 were initially not provided with information by DCR, because they are formally not a party in the asylum application. Accompanied children from 15 years and older are interviewed by the immigration authority on the asylum application of the family and therefore are also involved in the information provision to the family as a whole (Immigratie- en Naturalisatiedienst (IND), 2014). The lack of information provision to accompanied children below the age of 15 was noted by DCR and as a result, since 2012, it has set up several initiatives to fill this gap in practice.

First, information sessions are implemented to reach children between 9 and 18 years of age (9–12 years and 13–18 years). These sessions are held approximately twice a year per reception centre⁸ (depending on the number of newly arrived children) and aim to provide information on the asylum procedure, children's rights and life in the Netherlands. DCR has developed materials specifically for these 1.5 hour information sessions, such as a comic book and video concerning different flight stories and the asylum procedure, games (e.g. memory game, puzzles) and posters. Several respondents indicate, however, that the materials are more suitable for school-aged children (until 12 or 13 years of age) and not so attractive and challenging for children in the high school age. Respondents also state that the information concerning the asylum procedure is quite difficult to explain to children. On the one hand, the procedures are complex and abstract, but on the other hand these also concern the individual situation of children. When children ask very specific questions about their situation, respondents sometimes find it difficult as to how to respond:

Respondent 8: Yes, and your child cannot, during such a session, you cannot explain that to a child. And do you have to? And those are all questions as well, do you then as DCR enter into a separate conversation with

8 These information sessions can also be held at primary schools at reception centres and international transition classes (ISK) for secondary education. In 2018, 31 information sessions were held (VluchtelingenWerk Nederland, 2019).

such a child or together with the parents if necessary? And that is very searching for us, the things that are stirred up during such an information session, for example, which is why I think it is important that it is integrated into the Time4You's. There must be aftercare. ... And if you give information at a centre where you notice that this is on the mind of a child, then it is in any case necessary that this should be reported to a team manager, so that it is monitored. And that parents and that is our task also during the information session, that we inform parents about the fact that during an information session something can be stirred up in children, which they have to take into account and that they know this when we from the information session are not around anymore, that they can then go to DCR at the centre, to be able to talk about it there if they want.

Explaining about children's rights is also challenging, because of the abstract nature of rights. Respondents explain that they try to keep this part as practical as possible, discussing rights that relate to the children's current situation; such as the right to health and the right to education, because these rights are not dependent upon the immigration status of the child and should be safeguarded (see CRC Committee, 2006: paras. 41–49). These rights, however, do not specifically relate to the asylum application or the procedure, but are more generally of relevance to children. Chase (2013) has shown in her study among unaccompanied children in the UK that education and learning are of significant importance to these children in getting a sense of wellbeing, belonging and identity. Education is equalled with a sense of hope, opportunities and prospects for the future and it is identified by Chase as a 'therapeutic space' for children. Informing children about these rights may therefore be of great importance to them.

Second, a project named Time4You is implemented for children between 8 and 18 years of age (8–12 years and 13–18 years), which entails, among other things, weekly meetings of 1–1.5 hours for children at the reception centre (in 24 centres in 2018), during which a certain central theme is discussed or activity is organised. When the initiative started to provide information to accompanied children at reception centres, a weekly consultation hour was organised for children. It became clear, in practice, however, that this initiative did not reach children very well and children who came did not have specific requests for information. DCR therefore developed the Time4You methodology, which aims at providing information to children by organising activities around certain themes. Examples of themes addressed are the family, emotions, future, professions, holidays in the Netherlands and countries of origin, the child helpline, substance abuse, bullying, sexuality, religion, education in

the Netherlands and children's rights. The aim of the project is to provide a safe space for children at the reception centre to discuss issues that occupy their minds, because they have questions about it or feel insecure about certain matters. The activities and themes discussed can provoke questions and involvement on the part of the children and is a more interactive way of providing information to children, instead of only relying on the input of children themselves. One of the respondents formulates this as follows:

Respondent 9: Yes, the goal is indeed with children – giving children the opportunity to ask questions. So really, then you have again the children's consultation hour. So, a moment in the week when they can ask questions about their world, about their lives. And whether that goal is equally clear to all children, I do not think so. Because they come and they think oh, fun, we're going to do some handicrafts. And that's fine too, that they believe that. And in the meantime they talk quite a lot.

Next to the weekly meetings with children, DCR also provides legal advice and uses the flight story analysis, to prepare accompanied children for the asylum interview that they will have when they are 15 years or older.

4.2 *What do Children Know?*

This study also focuses on *children's legal literacy*, i.e. what knowledge and understanding do they possess of the asylum procedure? In this regard it is of importance to make a distinction between unaccompanied and accompanied children. Unaccompanied children arrive in the host community without a legal guardian and will most likely file an individual asylum application. Accompanied children, on the other hand, will most likely not file their own asylum application, but will depend on their parents' application. This in turn has certain consequences for their information position.

4.2.1 Unaccompanied Children

Respondents indicate that unaccompanied children receive a lot of complex information when they arrive in the Netherlands. They arrive at a registration centre, where identification (and possibly age assessment) takes place. After the minority of the person is established, a legal guardian is appointed. After that a lawyer is appointed, who will assist the child in applying for asylum. From the registration centre the child will move to a reception centre (*Proces opvang locatie [pol]*). Before the asylum procedure commences, unaccompanied children who seek asylum have an official rest and preparation period (*rust en voorbereidingstijd [RVT]*) of three weeks (art. 3.109, Aliens Decree; Goeman and Walst, 2016). During this period of time the unaccompanied child meets

with his guardian, his lawyer and with DCR. Furthermore, a medical assessment is carried out to determine whether the child has certain medical conditions that need to be taken into account by the immigration authority. In principle the child will be provided with an individual information session and flight story analysis. Respondents indicate that unaccompanied children are overwhelmed with information during the first weeks after arrival and they have the feeling that only a small percentage of the provided information is remembered accurately. This is confirmed in a recent study undertaken by UNHCR Netherlands (2019), where young refugees state that on arrival in the Netherlands they felt overwhelmed and confused. At the start of the asylum procedure they did not feel well enough prepared and often did not understand the roles and responsibilities of different actors, such as the guardian, and they did not always understand the information provided by the lawyer (see also UNHCR, 2014).

Respondent 10: Well, what I do notice about the information sessions, I mainly have experience with unaccompanied children, so under aged foreigners, that they have to do so much in such a short time that they remember very little. So they get information from us, they have a Nidos guardian from whom they receive information, from the COA [reception and asylum seeker centre employees, SR] they also get to hear certain information.

DCR has developed two brochures for unaccompanied children, in each of which a part of the asylum procedure is explained, so that it can be explained in portions to the child.⁹ Also, respondents indicate that repetition of information is of great importance, because that will increase the remembrance and understanding of the information by the child. This is confirmed in a study by UNHCR (2014), where professionals working with children state that several meetings with a child are necessary to explain the meaning of asylum, the importance of the interview and what is expected of him. Another aspect that is highlighted by respondents is the fact that children also receive information from peers (see also Council of Europe, 2018). This information is not always accurate, however, and sometimes difficult to get out of the heads of children. A related observation is that it is of importance that the different organisations provide the same information; otherwise children tend to “shop” for information that seems most favourable to them. Therefore, collaboration between the different actors in the asylum procedure is of importance. However, some respondents question whether this takes place effectively on the ground:

⁹ See also the website: www.forrefugees.nl.

Respondent 10: Yes, in principle we do, we know from each other what kind of information we give. So in principle it should be known, between the organisations. The individual people, I wonder about that from time to time.

4.2.2 Accompanied Children

Accompanied children depend heavily on their parents, concerning the information they receive (ENOC Taskforce children on the move, 2016; Cederborg, 2015; Crock, 2015; Ottosson and Lundberg, 2013). The general impression of respondents is that these children have a very fragmented picture of the asylum procedure and about their own asylum status. Parents are primarily responsible for informing their children about the family's situation and in practice parents have different ideas about what to share with their children and how to involve their children in the procedure. As a consequence, what children know differs substantially. Two of the respondents explain it as follows:

Respondent 8: They also receive so many bits and pieces from their parents, and stress, and that is what I notice in giving information sessions. They know, they absorb so many things. But they do not get the gist [*sic*] of it ... of course you often hear things like, but why does he already have a house and I don't? And why, if we get a house, why do I have to go there and why can he stay here? And well, you name it, we get questions like that, but also questions about the procedure.

Respondent 7: They have no idea how the procedure actually works. Even though they have been through it, they still remember snippets of it. I mean, they know that they have arrived in Ter Apel [first reception centre, SR], that they had to give a fingerprint once or that they sit on a lap to take a photo. The chocolate milk dispenser is very tasty there. You shouldn't be in some camps, because you cannot cook there and you get a bit of food on your plate. And sometimes you cannot stay and sometimes you have to leave and sometimes you can first live in a house and then you have to go back to an AZC [asylum seeker centre, SR]. That is what they know.

This lack of, or fragmented, knowledge can cause insecurity and anxiety among children. Children see the worries and stress of their parents, but because of their lack of knowledge they do not understand the seriousness and consequences of certain procedures and outcomes, which may incite feelings of

anxiety among children as well. One example concerns children who live in a family unit, where families live who have not been granted a residence right and have to return to their home country:

Respondent 7: Children just do not know. Also they really have a lot of fears, every morning we are afraid that if we hear a van, because between six and seven in the morning the immigration police can come to collect people. Only parents always really know when that week arrives. It is not that it is out of the blue, it is always, they know that they can be deported. But if it really is going to happen, please note, soon, within one, two weeks, you will be picked up. And that piece of information does not reach children. So they really think every morning, between six and seven when they hear a van...

A related issue is that children sometimes have to accompany their parents to appointments with DCR or other actors (e.g. the lawyer), because no childcare or afterschool care is available. These children see and hear everything that is discussed during these conversations among adults, including the stress and trauma their parents experience:

Respondent 9: And what we see a lot is that children are involved in appointments. So we have consultation hours all week in the morning. That's when parents come. But often there is no childcare or the children do not go to school yet and they come along of course. Or they come in the afternoon and have no childcare. So the children come along. And I always try to distract them with toys and pencils, to keep them busy, but I find it quite worrying that so many children really see the suffering ... and understand, indeed, what happens.

Respondents struggle with the fact that they observe that children lack information and understanding, but also do not feel that it is appropriate to provide the child with individual advice in a group setting. Respondents are aware of the fact that they cannot fulfil the role of parents and that they have to respect parents' choices regarding the information they give to their children. A tension exists therefore between general information provision about the asylum procedure and specific questions from children concerning their individual situation. Two respondents state:

Respondent 7: Because you would just like to explain everything to the child, but yes, you cannot fill in for the role of a parent ... Well, it is a field

of tension that you are in. Every employee is. On the one hand, you also notice that if you do give some information to children, that it does not make things any worse for them, just easier to understand how things are. And we do not burden them with the problem, which their parents worry about too. It is also not individual, it is very general.

Respondent 5: They sometimes hear from their parents, from others who walk around at the AZC [asylum seeker centre, SR]. They get all kinds of information here. But not always from A to Z. And sometimes parents also find it difficult. Protecting them. They try to protect their children by keeping information from them. And we do not deal with the individual situations, but with the general part of it.

Respondents solve this by either talking to the parents about the child's insecurities or talking to the child separately, to provide some more detailed information about the asylum procedure, outside the scope of the group session, to protect their privacy. This person will also verify with the child whether he has specific asylum motives, independent from his parents' motives to apply for asylum.

5 Discussion

The results of this study show that a clear divide exists between the information provision to unaccompanied versus accompanied children. In the Netherlands, unaccompanied children are asylum applicants and therefore have the right to receive information individually (arts. 3.108c(2) and 3.109(2), Aliens Decree). DCR provides individual information sessions and prepares unaccompanied children by means of a flight story analysis. Respondents indicate, however, that these children are provided with a lot of complex information upon their arrival in the Netherlands, which is often difficult to understand and to remember accurately. Moreover, they are provided with information from different sources, i.e. DCR, the guardian, the lawyer and peers (UNHCR Netherlands, 2019). There are clear indications that information received from peers might not be accurate. Furthermore, respondents state that it is of importance that children receive the same and accurate information from the different actors, so they are provided with a clear and fair picture of the procedure and its possible outcomes. This corresponds with findings from Kohli (2006b: 4), who explains that social workers found it of great importance to be 'honest, clear, realistic and precise in receiving and transmitting information'

in order to build a reciprocal relationship in which unaccompanied children were able to open up about their feelings and wishes as well. These social workers also wanted to show them that authority figures can be helpful and trusted persons, and not only investigators into their asylum motives. The results of the current study confirm that the activities of DCR focussing on information provision and preparation are aimed at helping children to prepare as well as possible for their involvement in the asylum procedure. Three of the other major actors involved with unaccompanied children in the asylum procedure are the guardianship organisation, the lawyer and the reception centre staff. It can be observed that DCR focuses on the provision of legal information regarding the procedures and the rights of asylum applicants, whereas guardians are focused on the protection, well-being and safeguarding of the best interests of unaccompanied children (see Nidos, 2019). Moreover, the reception facility staff has the most daily contact with the unaccompanied children, but has limited legal knowledge and specific information about their case. Lawyers usually start their involvement somewhat later in the process, right before the official asylum application process starts. In a recent study conducted by UNHCR Netherlands, it was indicated by different stakeholders that the many different persons involved, their different working methods, goals and working hours can cause confusion and frustration among young refugees as to whom to reach out to with specific questions (UNHCR Netherlands, 2019).

Accompanied children are largely dependent upon their parents regarding information provision about the asylum procedure. The results of this study show that these children (at least until they are 15 years old) do not have the individual right to information and as a consequence have a fragmented and incomplete picture of the asylum procedure. Lack of or inaccurate information may cause insecurity or anxiety among these children. Interestingly, the projects developed by DCR target children below the age of 15, because they are not involved in the asylum procedure and were therefore previously not provided with information. A practical challenge is the fact that the materials developed for the projects implemented by DCR are most suitable for children below the age of 13 and it was indicated that it was more difficult to make these materials attractive for teenagers. Recently, DCR has developed materials that better cater for this age group, involving vlogging, quizzes, photo-dialogues, designing presentations and collages and drama exercises. Future research should incorporate this promising development and consider whether older youth, between 15 and 18, are sufficiently reached out to and informed about the asylum procedure and their rights, in a manner that is adapted to their age and life situation.

When applying the results of this study to the classification developed by Stalford et al. (2017), the information provided to unaccompanied children by DCR can first be defined as practical and procedural information about the asylum procedure and the roles of the different actors. Secondly, it consists of foundational rights-based information in the sense that children receive information on their rights in the procedure. However, it is unclear to what extent DCR plays a considerable role in providing this type of information and most likely, lawyers will engage more in doing so. Thirdly, the flight story analysis can be seen as a layer of agency asserting information, because this preparation enables children to participate more meaningfully in the asylum interview with the immigration authorities. When applying this framework to the information sessions with accompanied children, first of all practical and procedural information is provided, in general terms. Foundational rights-based information is provided to some extent, because children are given information on children's rights. The rights discussed, however, mainly relate to the situation here and now, such as the right to health and the right to education. Furthermore, as respondents indicate that they find it difficult as to how to respond to individual questions in the group sessions, it is more difficult to provide information on how proceedings should take place, because individual situations of children can be very different, depending on their country of origin, reason for applying for asylum and current asylum status. The third layer of agency asserting information is practically absent, because of the fact that accompanied children below the age of 15 do not participate in the asylum procedure. For children from the age of 15, the possibility exists to do a flight story analysis, in order to prepare the child for the asylum interview with the immigration authorities.

A major limitation to this study is the fact that children themselves were not asked about their experiences with the asylum procedure and specifically the way they can access information. Future research should take the perspectives of children into account as well, because it can give practitioners further guidelines on how best to reach children from different ages, on the content and topics children wish to be informed about and in a way that connects to their daily realities. Recently, the CRC Committee (2016) has acknowledged that digital media play an increasingly important role with respect to the child's right to information. Therefore, states should make sure that children have equal access to digital forms of information and training should be provided to enhance children's digital information and media literacy skills (para. 47; see also Leurs *et al.*, 2018). Equally, digital and social media play an important role in the lives of refugee children (UNHCR, 2016; Latonero *et al.*, 2018; Council of Europe, 2018; Kutscher and Kreß, 2018). It has been shown that social media

are increasingly used in exchanging information with peers in the host country or elsewhere in the world (Council of Europe, 2018). Strikingly, digital and on-line media tools are hardly used to reach children in this context. This could be further explored in developing methods of information sharing with refugee children.

6 Conclusion

The right to information for children is seen as an important element of the child's effective legal position. This is of particular importance to refugee children, because they find themselves in a vulnerable position, applying for asylum in a foreign country. Receiving adequate and child-friendly information on the asylum procedure and its possible outcomes should be guaranteed through international and European binding standards and non-binding recommendations. The legally binding standards provide minimum guarantees, and soft law standards have been developed further to conceptualise, among others, the right to information and concretise the manner in which information should be conveyed on refugee children. Furthermore, case law of the European Court of Human Rights shows that the right to information is part of the procedural safeguards that should be accorded to children in the context of asylum procedures. Other children's rights and concepts, such as children's access to justice, child-friendly justice and the right to participation, are also closely related to the right to information, as information is vital for children to be able to understand and exercise their rights.

In the Netherlands the Dutch Council for Refugees has the official task of informing refugee children regarding the asylum procedure and their rights. Unaccompanied children, who apply for asylum, have the formal right to receive information. Accompanied children depend on their parents for information provision and therefore DCR has developed initiatives to reach these children as well. The results of this study show that both unaccompanied and accompanied children receive, according to the classification developed by Stalford et al. (2017), practical and procedural information on the asylum procedure. Foundational rights-based information is provided as well, but to a somewhat lesser extent to accompanied children. Agency asserting information is only provided to unaccompanied children and accompanied children from the age of 15, in discussing the flight story with them. This study confirms that accompanied children receive less attention and information on the asylum procedure. Specifically, the information position of children between 15–18 years merits attention, because they are heard independently by the

immigration authority in the asylum application lodged by the family as a whole. For all children involved in asylum procedures, it is of importance to improve their legal literacy as part of an effective legal position; to develop a better understanding of the meaning of their rights in practice and to enable them effectively to exercise their rights. By receiving accurate and child-friendly information, children will be better prepared for their involvement in the procedures, it may alleviate their feelings of stress and insecurity, enhance their emotional well being and it will give them guidance on where to go to in case they feel that their rights are not sufficiently upheld, or even violated.

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