

**Submission from  
the United Nations High Commissioner for Refugees (UNHCR) to the legal  
representative in case numbers xxxxxxxx, xxxxxxxx and xxxxxxxx  
(xxxxxxxxxxxxxxxxxxxx) before the Danish Refugee Appeal Board**

**I. UNHCR’s mandate and role**

1. The Office of the United Nations High Commissioner for Refugees (hereafter “UNHCR”) has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.<sup>1</sup> According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”<sup>2</sup> This supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”).<sup>3</sup>
2. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and complementary Guidelines on International Protection.<sup>4</sup> UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of provisions of the 1951 Convention.
3. UNHCR’s submissions do not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoys under

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<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950 A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (hereafter “UNHCR Statute”).

<sup>2</sup> UNHCR Statute, para. 8(a).

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

<sup>4</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html> (hereafter “UNHCR, Handbook”).

applicable international legal instruments and recognized principles of international law.<sup>5</sup>

4. These submissions are made in respect of case numbers xxxxxxxx, xxxxxxxx and xxxxxxxx, concerning a single mother with two minor children originating from xxxxxxxx, Afghanistan. The applicants, whose original claim was rejected xx xxxx, are now requesting a reconsideration of the decision of the Danish Appeal Board not to grant them refugee or subsidiary protection status.
5. In these submissions UNHCR will address three issues relevant to this case:
  - (1) The interpretation and application of the 1951 Convention grounds in the context of gender-related claims, including the membership of a particular social group ground;
  - (2) The right of the child to seek asylum in his or her own right; and
  - (3) The main principles for conducting credibility assessments.

UNHCR will only seek to address issues of legal principle arising from these points and will not address or comment on the particular facts of the claim or position taken by the parties.

## **II. Gender-based refugee claims and the Convention ground “membership of a particular social group (MPSG)”**

6. The criteria for refugee status are set out in Article 1A(2) of the 1951 Convention and are to be interpreted in accordance with their ordinary meaning, and in light of the object and purpose of the 1951 Convention. The preamble of the 1951 Convention contains strong human rights language, and indicates that the intention of the drafters was to incorporate human rights values in the application and interpretation of the Convention.<sup>6</sup>
7. In all claims to refugee status, the well-founded fear of persecution needs to be related to one or more of the grounds specified in the refugee definition in Article 1A (2) of the 1951 Convention; that is, it must be for reasons of race, religion, nationality, membership of a particular social group (hereafter “MPSG”) or political opinion. However, the Convention ground needs only to be a contributing factor to the well-founded fear of persecution; it need not be shown to be the dominant or even the sole cause.
8. As noted in the UNHCR Guidelines on International Protection concerning Gender-related Persecution,<sup>7</sup> it is an established principle that the refugee

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<sup>5</sup> UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, available at: <http://www.refworld.org/docid/3ae6b3902.html>.

<sup>6</sup> UNHCR, *Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees*, April 2001, available at: <http://www.unhcr.org/refworld/docid/3b20a3914.html>. (hereafter “UNHCR, Interpreting Article 1”), paras. 2–5.

<sup>7</sup> UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of*

definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status. This approach has been endorsed by the UNHCR Executive Committee, of which Denmark is a Member State.<sup>8</sup> The UN Committee on the Elimination of Discrimination Against Women has similarly recommended that “States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality: fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary.”<sup>9</sup> Even though gender is not specifically mentioned in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.<sup>10</sup>

9. Ensuring that a gender-sensitive interpretation is given to each of the Convention grounds is important in determining whether a particular claimant has fulfilled the criteria of the refugee definition. It is important to be aware that in many gender-related claims, the persecution feared could be for one, or more, of the Convention grounds; they are not mutually exclusive and may overlap.<sup>11</sup> For example, a claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group. The claimant is not required to identify accurately the reason why he or she has a well-founded fear of being persecuted.<sup>12</sup>
10. The political opinion ground may be particularly relevant in certain gender-related claims, including claims based on a fear of forced marriage in a society such as Afghanistan.<sup>13</sup> In UNHCR’s view,

“political opinion should be understood in the broad sense, to incorporate any opinion on any matter in which the machinery of State, government, society, or policy may be engaged. This may include an opinion as to gender roles. It would also include non-conformist behaviour which leads the persecutor to impute a political opinion to him or her. In this sense, there is not as such an inherently political or an inherently non-

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*Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.refworld.org/docid/3d36f1c64.html> (hereafter “UNHCR, Guidelines on Gender-related Persecution”), para. 2.

<sup>8</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html>, para. 38.

<sup>9</sup> UNHCR, *General Conclusion on International Protection*, 8 October 1999, No. 87 (L) - 1999, para. (n), available at: <http://www.refworld.org/docid/3ae68c6ec.html>. See also General Conclusions no. 39, 73, 77 (g), 79 (o) and 81 (t).

<sup>10</sup> UNHCR, *Guidelines on Gender-related Persecution*, para. 6.

<sup>11</sup> *Ibid*, para. 23; UNHCR, *Handbook*, para. 67.

<sup>12</sup> UNHCR, *Handbook*, para. 67.

<sup>13</sup> See e.g. UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 6 August 2013, HCR/EG/AFG/13/01, available at: <http://www.refworld.org/docid/51ffdca34.html>, pp. 48–57, concerning the risk of forced and under-age marriage and the continuing tradition of coercing widows into marrying a man from their deceased husband’s family.

political activity, but the context of the case should determine its nature. A claim on the basis of political opinion does, however, presuppose that the claimant holds or is assumed to hold opinions not tolerated by the authorities or society, which are critical of their policies, traditions or methods.”<sup>14</sup>

11. Gender-related claims are often analysed within the parameters of the MPSG ground. As with the other Convention grounds, this ground should be interpreted in an evolutionary manner and there is no closed list of what is considered “a particular social group”.<sup>15</sup> Many jurisdictions have accepted that women and children and their various subsets as well as family can form particular social groups within the meaning of the refugee definition of the 1951 Convention.<sup>16</sup>

12. The UNHCR Guidelines on International Protection concerning the MPSG ground adopts the following definition of a particular social group:

“a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, *or* who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”<sup>17</sup>

This definition combines the two dominant approaches in decision-making, that is, the “protected characteristics” approach and the “social perception” approach into one single standard. In UNHCR’s view, only one of the two approaches needs to be met in order to satisfy the particular social group ground.

13. The “protected characteristics” approach (sometimes referred to as the “immutability” approach), examines whether a group is united by an immutable characteristic or by a characteristic that is so fundamental to human dignity that a person should not be compelled to forsake it. An immutable characteristic may be innate (such as sex or ethnicity) or unalterable for other reasons (such as the historical fact of a past association, occupation or status). Human rights norms may help to identify characteristics deemed so fundamental to human dignity that one ought not to be compelled to forego them.<sup>18</sup>

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<sup>14</sup> UNHCR, Guidelines on Gender-related Persecution, para. 32.

<sup>15</sup> UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>, (hereafter “UNHCR, MPSG Guidelines”) para. 3.

<sup>16</sup> UNHCR, MPSG Guidelines, paras. 6 and 7. See also, UNHCR, *The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'*, August 2012, PPLA/2012/02, available at: <http://www.refworld.org/docid/4f7d94722.html>. Also, the Norwegian Appeals Board (UNE) has recognized this in, among others, case N158568519; ”Med henvisning til UNHCRs anbefalinger, kjent landinformasjon og landrådgivers redegjørelse i nemndmøtet fant nemnda at hun faller inn under konvensjonsgrunnen «medlemskap i en spesiell sosial gruppe» som enslig kvinne fra Afghanistan uten nettverk, og at hun dette har en velbegrunnet frykt for forfølgelse”.

<sup>17</sup> UNHCR, MPSG Guidelines, para. 11.

<sup>18</sup> *Ibid.*, para. 6.

14. The social perception approach examines whether or not a group shares a common characteristic which makes them a cognizable group or sets them apart from society at large.<sup>19</sup> The common attribute does not need to be visible to the naked eye or be easily identifiable to the general public. The focus is simply on whether the group is cognizable or set apart from society in some way.<sup>20</sup>

15. Importantly, the 1951 Convention does not set out specific requirements regarding the whole of the social group having to be persecuted, nor the size of the group in question:

“An applicant need not demonstrate that all members of a particular social group are at risk of persecution in order to establish the existence of a particular social group. As with the other grounds, it is not necessary to establish that all persons in the political party or ethnic group have been singled out for persecution. Certain members of the group may not be at risk if, for example, they hide their shared characteristic, they are not known to the persecutors, or they cooperate with the persecutor.”<sup>21</sup>

“The size of the purported social group is not a relevant criterion in determining whether a particular social group exists within the meaning of Article 1A(2). This is true as well for cases arising under the other Convention grounds. For example, States may seek to suppress religious or political ideologies that are widely shared among members of a particular society—perhaps even by a majority of the population; the fact that large numbers of persons risk persecution cannot be a ground for refusing to extend international protection where it is otherwise appropriate.”<sup>22</sup>

16. As further noted in the UNHCR MSPG Guidelines, it “follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men.”<sup>23</sup>

Moreover, women “may constitute a particular social group under certain circumstances based on the common characteristic of sex, whether or not they associate with one another based on that shared characteristic.”<sup>24</sup> This does not mean that all women in the society qualify for refugee status. A claimant must still demonstrate that he or she meets the other eligibility criteria in the 1951 Convention.<sup>25</sup>

17. In UNHCR’s view, a range of child groupings can be the basis of a claim to refugee status under the “membership of a particular social group” ground. Just as “women” have been recognized as a particular social group in several

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<sup>19</sup> *Ibid.*, para. 7.

<sup>20</sup> See, e.g. UNHCR, *UNHCR intervention before the United States Board of Immigration Appeals in the matter of Valdiviezo-Galdamez*, 10 August 2012, available at: <http://www.refworld.org/docid/503653562.html>; UNHCR, *UNHCR public statement in relation to decisions J.E.F. and A.O. by the Cour nationale du droit d'asile*, 12 June 2012, available at: <http://www.refworld.org/docid/4fd84b012.html>, at. 2.3.

<sup>21</sup> UNHCR, MSPG Guidelines, para. 17.

<sup>22</sup> *Ibid.*, para. 18.

<sup>23</sup> *Ibid.*, para. 12.

<sup>24</sup> *Ibid.*, para. 15.

<sup>25</sup> *Ibid.*, para. 19.

jurisdictions, “children” or a smaller subset of children may also constitute a particular social group”.<sup>26</sup> Although age, in strict terms, is neither innate nor permanent as it changes continuously, being a child is in effect an immutable characteristic at any given point in time. A child is clearly unable to disassociate him/herself from his/her age in order to avoid the persecution feared.”<sup>27</sup>

### III. The right of the child to seek asylum in his or her own right

18. The refugee definition in the 1951 Convention applies to all individuals regardless of their age. In order not to overlook children’s claims to refugee status, it is important to assess their claims individually and to take into account child-specific forms and manifestations of persecution, including under-age marriage.<sup>28</sup>

19. Each child, whether unaccompanied or accompanied by their parents or other caregiver, has the right to make an independent refugee claim.<sup>29</sup> Where both the parent and the child have their own claims to refugee status, it is preferable that each claim be assessed individually.<sup>30</sup> As the UNHCR Guidelines on International Protection concerning Child Asylum Claims outline:

“The specific circumstances facing child asylum-seekers as individuals with independent claims to refugee status are not generally well understood. Children may be perceived as part of a family unit rather than as individuals with their own rights and interests.”<sup>31</sup>

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<sup>26</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles I(A)2 and I(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>, (hereafter “UNHCR, Guidelines on Child Asylum Claims”), para. 49.

<sup>27</sup> *Ibid.*, See also *Decision V99-02929*, V99-02929, Canada: Immigration and Refugee Board of Canada, 21 February 2000, available at: <http://www.refworld.org/docid/4b18e5592.html>, which found that “[t]he child’s vulnerability arises as a result of his status as a minor. His vulnerability as a minor is an innate and unchangeable characteristic, notwithstanding the child will grow into an adult”. See also *LQ (Age: Immutable Characteristic) Afghanistan v. Secretary of State for the Home Department*, [2008] UKAIT 00005, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 15 March 2007, available at: <http://www.refworld.org/docid/47a04ac32.html>, finding that the applicant, “although, assuming he survives, he will in due course cease to be a child, he is immutably a child at the time of assessment”. Also the Norwegian Directorate of Immigration has, in a number of cases, concluded that children from Afghanistan, in various circumstances, can be considered members of a particular social group in the context of the 1951 Convention. Sårbare afghanske barn kan utgjøre en ”spesiell sosial gruppe”. Den sosiale gruppen kan for eksempel defineres som «afghanske barn som har vært ofre for Bacha Bazi”, ”afghanske barn uten fedre” eller ”gatebarn i Afghanistan”. [http://www.udiregelverk.no/no/rettskilder/udi-praksisnotater/pn-2014-004/#\\_Toc387926097](http://www.udiregelverk.no/no/rettskilder/udi-praksisnotater/pn-2014-004/#_Toc387926097)

<sup>28</sup> UNHCR, *Guidelines on Child Asylum Claims*, paras. 1 and 4.

<sup>29</sup> European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <http://www.refworld.org/docid/51d29b224.html>, Article 7(3).

<sup>30</sup> UNHCR, *Guidelines on Child Asylum Claims*, para. 9.

<sup>31</sup> *Ibid.*, para. 2.

While in general, the duty to establish the claim is shared between the child and the decision-maker, in the case of children, decision-makers need to take on a greater role to ensure that all relevant elements of the claim are assessed.<sup>32</sup>

20. In the *Conclusion on Children at Risk* (2007), UNHCR's Executive Committee underlines the need for children to be recognized as "active subjects of rights" consistent with international law. The Executive Committee also recognized that children may experience child-specific forms and manifestations of persecution." In addition, it recommends States to; "Within the framework of the respective child protection systems of States, utilize appropriate procedures for the determination of the child's best interests which facilitate adequate child participation without discrimination: where the views of the child are given due weight in accordance with age and maturity; where decision makers with relevant areas of expertise are involved; and where there is a balancing of all relevant factors in order to assess the best option;"<sup>33</sup>

21. Article 22 of the Convention on the Rights of the Child (CRC)<sup>34</sup> provides a comprehensive framework for the responsibilities of States parties to all children within their jurisdiction, including asylum-seeking and refugee children. The guiding principles of the best interests of the child (Article 3) and the right to be heard (Article 12) of the CRC inform both the substantive and the procedural aspects of the determination of a child's application for refugee status and other forms of international protection.<sup>35</sup>

22. The UN Committee on the Rights of the Child (CRC), General comment No. 12: The right of the child to be heard,<sup>36</sup> outlines that States parties shall assure the right to be heard to every child "capable of forming his or her own views". This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. The views of the child must be given due weight in accordance with the age and maturity of the child. This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12 stipulates that simply listening to the child is

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<sup>32</sup> *Ibid.*, paras. 8 and 73. See also, UNHCR, *The Heart of the Matter - Assessing Credibility when Children Apply for Asylum in the European Union*, December 2014, available at: <http://www.refworld.org/docid/55014f434.html>, p. 113.

<sup>33</sup> UNHCR, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007, available at: <http://www.refworld.org/docid/471897232.html>.

<sup>34</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: <http://www.refworld.org/docid/3ae6b38f0.html>, p. 3.

<sup>35</sup> UNHCR, *Guidelines on Child Asylum Claims*, para. 5. See also, UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>.

<sup>36</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, available at: <http://www.refworld.org/docid/4ae562c52.html>, p. 9.



insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.”<sup>37</sup>

23. The principle of the best interests of the child provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>38</sup> The UNHCR Executive Committee has in several of its Conclusions stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child.<sup>39</sup> The principle of the best interests of the child requires that the harm be assessed from the child’s perspective. For example, ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child.<sup>40</sup>

#### **IV. Principles of the credibility assessment**

24. International protection determinations require assessing the credibility of the applicant’s statements, i.e. the gathering of relevant information, the identification of the material facts of the application and the determination of whether and which of the Applicant’s statements and other evidence can be accepted. Subsequently, and based on the material facts and accepted evidence, it requires an analysis of the well-founded fear of persecution.<sup>41</sup>

25. Any credibility assessment is preferably also to be conducted using the multi-disciplinary approach. It is widely assumed that human memory, behaviour and perceptions conform to a norm, and that deviations from this norm may be indicative of a lack of credibility. However, scientific research in the field of psychology has shown that the assumptions that interviewers and decision-makers commonly make may not accord with what is now known about human memory, behaviour, and perceptions. On the contrary, the research indicates that there is no such norm, that human memory, behaviour, and perceptions vary widely and unpredictably, and that they are affected by a wide range of factors and circumstances.<sup>42</sup>

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<sup>37</sup> *Ibid*, p. 11.

<sup>38</sup> CRC, Article 3.

<sup>39</sup> UNHCR, *A Thematic Compilation of Executive Committee Conclusions, 6th edition, June 2011*, available at: <http://www.refworld.org/docid/4f50cfbb2.html>; *Conclusion No. 47 (XXXVIII) – 1987 – Refugee Children*, stressing that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity, para. (d); *Conclusion No. 98 (LIV) – 2003 – Protection from Sexual Abuse and Exploitation*, providing that the best interests of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation.

<sup>40</sup> UNHCR, *Guidelines on Child Asylum Claims*, para. 10.

<sup>41</sup> UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report*, May 2013, available at: <http://www.refworld.org/docid/519b1fb54.html>, (hereafter, “UNHCR, Beyond Proof”), p. 261.

<sup>42</sup> *Ibid*, p. 56. See also, Hilary Evans Cameron, “Refugee Status Determinations and the limits of Memory”, *International Journal of Refugee Law*, Oxford Journals, Volume 22, Issue 4, pp. 469–511.



26. This in turn requires that the examination of the application, including the credibility assessment, must be conducted fully taking into account the individual and contextual circumstances of the applicant as well as relevant factors affecting the decision-maker.<sup>43</sup> These factors and circumstances should be taken into account routinely and in an integrated way with regards to and throughout all aspects of the credibility assessment.<sup>44</sup>

27. The applicant's background and educational level may be examples of factors having a bearing on a testimony. In addition, considering individuals from societies where the possibilities of obtaining information may be divided along cultural and gender lines, it may be particularly challenging to determine what can and should be expected from their testimony:

"Gender differences have also been noted in scientific research on recall. Leading memory researchers have noted that: "Differences in the historical social roles of the two genders have undoubtedly contributed to the development of different interests as well as different expectations regarding the types of activities at which each gender should excel. Thus, variations between men's and women's memory performance may be due to their physiological capabilities, their interest, their expectations, or some complex interaction of these factors."<sup>45</sup>

"A woman, for instance, may lack experience of and confidence in communicating with figures of authority. A woman, for instance, may be unaccustomed to communicating with strangers and/or persons in public positions due to a background of social seclusion and/or social mores dictating that, for example, a male relative speaks on her behalf in public situations. In addition, it may be common for a female applicant to be deferential in her country of origin or place of habitual residence. Male applicants may also find it difficult to discuss aspects of their past and present experiences that may be at variance with their expected gender roles in their society. Such factors may account for brief, vague or apparently inconsistent responses."<sup>46</sup>

"An applicant may be illiterate and may not have been educated in the use of, for example, time, dates and/ or distances. For example, the Trial Chamber of the ICTR noted that some witnesses testifying before the court were farmers with limited formal education. Consequently, it was to be expected that they would have difficulty testifying about exhibits such as maps or photographs of locations, films or other graphic representations, dates, times, distances, colours, and motor vehicles. Therefore, no adverse inference about their credibility would be drawn from reticent or circuitous answers in this regard."<sup>47</sup>

28. While considerations concerning the plausibility of the applicant's statements are often unavoidable in the context of a holistic credibility assessment, such findings should preferably not be the core of a rejection decision:

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<sup>43</sup> European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <http://www.refworld.org/docid/4f197df02.html>, Article 4(3).

<sup>44</sup> UNHCR, *Beyond Proof*, p. 55.

<sup>45</sup> *Ibid.*, p. 69.

<sup>46</sup> *Ibid.*, p. 70.

<sup>47</sup> *Ibid.*, p. 68.

“With such uncertainties surrounding the meaning of ‘plausibility’, an assessment of whether facts presented by an applicant seem reasonable, likely or probable, or make ‘common sense’ risks becoming intuitive, based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping, rather than accurate, objective, and current evidence.”<sup>48</sup>

29. Finally, the reasons as to why the credibility finding on each material element of the claim is considered not credible or implausible should be clearly explained. The decision should contain a conclusive assessment on the credibility for each material element, and a conclusive statement also regarding elements that are considered credible;

“Determine which material facts can be: (a) accepted as credible, (b) rejected as not credible, and (c) those material facts for which an element of doubt remains.

For those material facts regarding which an element of doubt remains, consider whether the benefit of the doubt should be applied with respect to the facts in question. On the basis of the entire information at hand, decide: (a) to accept the remaining facts as credible; (b) to reject the remaining facts as not credible.

Finally, state in the written decision all the material facts that have been accepted as credible and will inform the assessment of the well-founded fear of persecution and the real risk of serious harm, and all the material facts that have been rejected as not credible, as well as the reasons underpinning these findings of facts.”<sup>49</sup>

“Where asserted material facts relating to factual circumstances such as ethnicity or religion are not accepted as credible, the finding of a lack of credibility must be explicitly stated and justified. Where some of the asserted material facts are accepted as credible and others are not, those that are considered credible must be identified. However, the written decision need not state on what grounds the fact has been accepted.”<sup>50</sup>

## Conclusions

32. In summary and with the support of the above stated, UNHCR hereby respectfully submits its views on the subjects referred to above, namely;

- The interpretation and application of the 1951 Convention grounds in the context of gender-related claims, including the membership of a particular social group ground;
- The right of the child to seek asylum in his or her own right; and
- The main principles for conducting credibility assessments.

UNHCR Regional Representation for Northern Europe

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<sup>48</sup> *Ibid.*, p. 177.

<sup>49</sup> *Ibid.*, p. 246.

<sup>50</sup> *Ibid.*, p. 51. The text refers to good practices on the subject from various European jurisdictions.