

# CREDIBILITY ASSESSMENT IN ASYLUM PROCEDURES

A MULTIDISCIPLINARY TRAINING MANUAL

VOLUME 2

2015

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**CREDIBILITY ASSESSMENT IN ASYLUM PROCEDURES**  
**– A MULTIDISCIPLINARY TRAINING MANUAL**  
**VOLUME 2**

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# INTRODUCTION

*“To believe or not to believe... this is the question?”*

Credibility assessment is undoubtedly one of the most challenging aspects of asylum decision-making. An important part of claims for international protection are rejected based on the justification that the determining authority or court does not believe what the applicant says. While in recent decades there has been spectacular advancement regarding the legal standards and relevant concepts of international refugee law, credibility has to some extent remained out of focus. This training manual aims to fill an important gap, by offering **a creative, multidisciplinary learning method on credibility assessment, tailored to the needs of asylum decision-makers and other asylum professionals.**

This manual **does not offer magic tricks, techniques or solutions** to overcome the serious challenges of credibility assessment – simply because no such tricks exist. What we offer is a framework for developing knowledge, skills and attitude through multidisciplinary learning, which can help asylum professionals to **reduce the possibility of errors, reach more objective and fair credibility findings, as well as to apply a more structured approach** to credibility assessment.

This is **not an academic publication.** Many of the issues covered in the two modules are of a complex and challenging nature and this publication does not aim to provide a detailed, scientific analysis. It rather strives to offer an **easily digestible, concise – yet valuable – summary** of what decision-makers and other asylum professionals need to know about the key issues related to credibility assessment. The style of the publication, including that of footnote references, is therefore **informal** and tailored to a learning objective.

This manual has been drafted in **English**, the most widely spoken language in Europe, in order to ensure the greatest outreach to people who may find this publication interesting or relevant for their work. We are aware of the fact that English will not be the mother tongue of most readers; therefore we have tried to **avoid complicated vocabulary and structures.** Within the strong limits set by the complexity of the content, we have aimed for a clear and simple style.

This is a **multidisciplinary** manual, meaning that it covers knowledge from different areas of science, including law, medicine, psychology and anthropology. **You do not need to be a legal expert, psychologist, psychiatrist or anthropologist to understand and use the content of this manual.** On the contrary, our aim is to present the core knowledge from various disciplines to asylum professionals, who may not have a specific educational background in these areas of science. The composition of authors also reflects the diversity of the content (see the short introduction of contributors at the end of the publication).

This training manual can be used in various frameworks, including **self-study and face-to-face training.** As a book, the interactivity it offers may be limited, yet the authors strived to include a number of **exercises and questions for reflection.** If you use this publication alone (for self-study) it is very important that you complete the exercises before you continue reading.

The authors wish to **build upon already existing materials** (including UNHCR guidance and publications as well as the training curriculum and guidance documents of the European Asylum Support Office), ensuring synergy with their content and terminology. The content of this manual can therefore be **easily integrated into other training programmes.**

Notwithstanding the EU focus of this manual, its intended use is **not necessarily limited to Europe**. Most of Module A (in Volume 1) can be adapted to other legal contexts by adducing references to national or regional norms established by legislation, guidance and/or jurisprudence. Module B (shared between Volume 1 and 2) is directly applicable to all non-European contexts, as its multidisciplinary content is not Europe-focused.

Finally, we must emphasise that this manual is **work in progress**. Being the first initiative of its kind, there may well be useful information or nuances that can further improve its content. Several research initiatives are expected to take place in the forthcoming years, as well as specific UNHCR guidance on credibility assessment. Therefore the authors would be pleased to receive any suggestion for the further development of this manual and the “CREDO training methodology”.

This is the **second volume** of the multidisciplinary training manual “Credibility Assessment in Asylum Procedures”, the two volumes **should be read and used in conjunction**. The first volume – published by the Hungarian Helsinki Committee in 2013 – was very positively received by the professional public both in Europe and beyond. Several hundreds of asylum professionals have been trained since 2013 on the basis of the CREDO methodology in various continents, and the Practical Guide on Evidence Assessment of the European Asylum Support Office (EASO) explicitly refers to it as an “important source of information”.

This short introduction can only conclude with the expression of the editor’s and the authors’ sincere hope that this manual will significantly contribute to fair, objective and effective asylum procedures in the EU and beyond.

## Module B

# MULTIDISCIPLINARY LEARNING

(continuation of Volume 1)





# IX. ASSESSING CREDIBILITY IN A MULTILINGUAL CONTEXT

## SETTING THE SCENE

Most asylum-seekers do not or do not sufficiently speak the official language of the host country; therefore **interviews are usually conducted with the involvement of an interpreter**. Even when this is not necessary, it is extremely rare that the asylum-seeker and the interviewer speak exactly the same version or variety of the language they communicate in. Asylum interviews are consequently not only multi- or intercultural,<sup>1</sup> but in most cases also **inevitably multilingual** (which is a particular aspect of cultural differences). Experience shows that the impact of linguistic diversity and the distortion it may cause in credibility assessment are often underestimated. This is why a specific chapter is dedicated to this issue, with the concrete objectives of:

- ✓ presenting the main **terms and concepts** related to linguistic diversity and explain why they matter in the process of credibility assessment;
- ✓ raising awareness about **the characteristics and the inherent limitations of multilingual communication**, as well as about **why interpreting in the asylum context is special**;
- ✓ showing various **examples of typical linguistic distortions** with an impact on credibility findings (based on several years of practical experience, as well as literature);
- ✓ helping decision-makers and legal advisors to professionally deal with inherent distortions and **reduce their impact** on credibility assessment.

Like the previous chapters, this chapter also has a strong practical focus. The approach to language and interpretation will strictly concentrate on credibility assessment-related aspects, and will refrain from providing an in-depth, academic analysis of this topic (for such literature readers are recommended to consult the bibliography at the end of this volume). It should also be noted that this is:

- ✓ not a training module for linguists, but for asylum professionals;
- ✓ not a guide on how to do high-quality interpretation, but on what linguistic and interpretation-related issues to look at when assessing credibility in the asylum context;
- ✓ not a module on interviewing techniques.<sup>2</sup>

This chapter will not deal with the issue of “language analysis” (the substantiation of an asylum-seeker’s nationality or ethnic affiliation through assessing the language

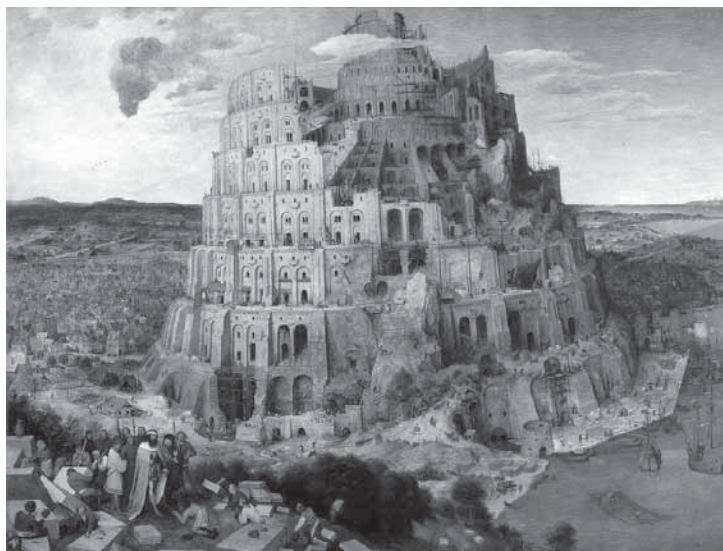
<sup>1</sup> See Chapter VII.1

<sup>2</sup> For such training material see the European Asylum Support Office Training Curriculum (previously European Asylum Curriculum, EAC), Interview Techniques Module, as well as European Asylum Support Office, *EASO Practical Guide: Personal interview*, December 2014





Since the early days of human civilisation, linguistic diversity has always been an exciting topic for thinkers and artists. Probably the best known manifestation of this phenomenon is the biblical story of the Tower of Babel, which has been used throughout the centuries (and is used even today) as the primary symbol of chaos due to a lack of communication and mutual understanding.



In the early 21<sup>st</sup> century, English has unquestionably taken over as the principal language of international communication, a phenomenon accelerated by the fast globalisation of communication, especially through the internet. The British Council estimates that today, one quarter of the world's population is estimated to speak English to some level of competence. At the same time, linguistic diversity is declining, with “small” languages disappearing at a worrisome pace. Still, the world's linguistic diversity is impressive, as **humanity uses several thousands of languages for communication**. It is fairly impossible to count the exact number of languages, primarily due to the methodological difficulties of determining what differentiates a language from a dialect or other language version.<sup>5</sup> In addition, uncontacted peoples (presumably with their own language systems) still exist in some parts of the world (for instance in Amazonia). To give a concrete estimate, the prestigious Ethnologue database contains information on over 7 100 living languages.<sup>6</sup> Linguistic diversity is **not equally distributed in the world**: for example, Europe is significantly less diverse than Asia, Africa or even the Pacific region.

Asylum-seekers arriving in Europe (or elsewhere) speak hundreds of different languages. In some contexts, no interpreter may be necessary (Colombian asylum-seeker in Spain, French-speaking African asylum-seeker in France, etc.).<sup>7</sup> In the vast majority of cases, though, and in literally all cases in a number of countries, **asylum interviews will be conducted with an interpreter**. Under EU law, an asylum-seeker has the right to be informed about her/his rights and the decision taken in her/his case in a language she/he understands or is reasonably supposed to understand. Also, asylum-seekers are **entitled to be interviewed in the language they prefer, or another language they understand and in which they can communicate clearly**, for which processing authorities shall provide an interpreter.<sup>8</sup>

The challenge of interpreting in asylum cases will be different from country to country, depending on the composition of the asylum-seeker population, the availability of interpreters (which is linked to the immigration history of the host country and other factors) and the official language used in the procedure. Some states have a large and diverse pool of interpreters available to asylum authorities and courts, while others have scarce resources and limited access to professional interpreters. But in every case, **interpreting will bring inherent distortion into the communication process**.

<sup>5</sup> This issue will be presented in Chapter IX.2

<sup>6</sup> [www.ethnologue.com](http://www.ethnologue.com)

<sup>7</sup> Linguistic diversity can still cause complications in these cases – see later in this chapter

<sup>8</sup> 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), Articles 12 (1) (a), 12 (1) (f) and 15 (3) (c)

## 2. What is interpreting and why does it matter for credibility assessment?

### **The applicant's statements have a central role as key evidence in credibility assessment.**

The vast majority of credibility findings (both internal and external<sup>9</sup>) are based on, or at least related to, information provided verbally in the framework of an asylum interview. As we have seen in Chapter VII, this communication process (which serves as basis for the use of credibility indicators) is **inevitably distorted by intercultural barriers**, the impact of which can be reduced to some extent through developing intercultural competence.

Language, as a fundamental element and representation of culture, plays an extraordinary role in this context. As demeanour is considered an unreliable indicator,<sup>10</sup> **credibility assessment will mainly rely on what the asylum-seeker tells the interviewer.**

### EXERCISE IX.b

Check the four generally applied credibility indicators in Chapter II. Now prepare a list of how each of these indicators are influenced (and can be distorted) by factors related to language.

As you have probably seen, all credibility indicators are affected by language. For instance, the level of detail and specificity in communication is very sensitive to how the information is transposed from one language to another. Details easily get lost especially if the two languages have large structural differences (for example in the way sentences are constructed, order of words, etc.) or if larger blocks of text are translated instead of sentences (which is typical at asylum interviews). Internal inconsistencies may also result from the interpreter choosing two different options for translating the same important word on two different occasions, and so on. This chapter will present a number of examples from real cases on how simple mistranslations or misunderstandings can seriously, or even fully distort the credibility assessment process.

### EXERCISE IX.c

What does the terms “translation” and “interpreting” mean exactly? What are the differences and similarities between them? How many types of interpreting do you know? Write down your answers before you continue reading.

**Translation and interpreting** are two closely related terms and linguistic disciplines. In brief, both of them cover the act of **receiving and understanding information in language A and “decoding” it in language B for a person or persons who do not understand language A**. While translation is normally used for performing this act based on written information, interpreting usually covers the situation where spoken information is transmitted orally. Given the focus of this manual and the crucial importance of the asylum interview(s) in credibility assessment we will **focus on interpreting** in the rest of the present chapter.

According to the most common classification, there are **three main types** of interpreting:

<sup>9</sup> See Chapter II.5 in Volume 1

<sup>10</sup> See Chapter II.5 and Chapter VII.2, sub-sections 3 and 4, in Volume 1; as well as European Asylum Support Office, *EASO Practical Guide: Evidence Assessment*, March 2015, p. 11

SIMULTANEOUS INTERPRETING	<ul style="list-style-type: none"> <li>■ The interpreter immediately (with only a few seconds of delay) translates the information; therefore</li> <li>■ The information is necessarily cut into and translated in smaller units, with no possibility for significant rephrasing or any cultural mediation (see later);</li> <li>■ The interpreter faces great time pressure and a high level of stress;</li> <li>■ The interpreter is usually physically separated from the others (in a booth), an alternative technique is the so-called <i>chuchotage</i> – when the interpreter whispers into the ear of the listener, only applied when there is only one or a few listeners involved;</li> <li>■ A common method applied at conferences, conventions, training events, multilateral diplomacy and all sorts of events where more than two languages are involved.</li> </ul>
CONSECUTIVE INTERPRETING	<ul style="list-style-type: none"> <li>■ The interpreter does not speak in parallel with the speaker, but waits until a block of information is finished and then takes the floor to translate (while the speaker is silent);</li> <li>■ With this type of interpreting there is – at least technically – a possibility to rephrase or restructure the information, to summarise or to bring in cultural references;</li> <li>■ There is less time pressure a relatively lower level of stress, but it may be indispensable to take notes;</li> <li>■ The interpreter is in the same physical space with the speaker and the listener(s);</li> <li>■ A common method at business meetings, in bilateral diplomacy in official proceedings involving foreigners (such as asylum, immigration or criminal procedures).</li> </ul>
COMMUNITY/LIAISON INTERPRETING	<ul style="list-style-type: none"> <li>■ Similar to consecutive interpreting, but used in more informal settings, such as consultations with a medical doctor or a lawyer, interactions with social services or school, informal meetings or information sessions, etc.;</li> <li>■ More flexible time management and more flexible roles; no administrative or legal rules to be applied;</li> <li>■ Summarising, adducing cultural references or explanatory remarks, etc. may not only be possible but even expected;</li> <li>■ The principal role of the interpreter is to establish a functioning communication link (“liaison”) between the members of the community and transmit messages bridging cultural, educational, etc. gaps, and she/he has more freedom to choose the means.</li> </ul>

**Consecutive interpreting** is the method applied during asylum interviews. However, depending on a number of individual factors, the method used may also be **similar to community/liason interpreting**.

### 3. The inherent limits of translation/interpreting

Interpreting from one language to another involves an **inevitable risk of distorting the content**. This is due, in first place, to the **difference between languages**. Languages are **complex cultural constructs** with their own characteristics and limits. They are not simply neutral carriers of communication and messages; they are **part of the message**. A commonplace example for this is music: singing *flamenco* or *fado* in Yoruba, Albanian or Thai (instead of Andalusian Spanish and Lisboan Portuguese, respectively) would probably be an interesting cultural initiative, but the performance would lose a significant amount of authenticity and expressiveness. The songs of Édith Piaf also lose their unique charm if not sung in French, and the list of examples could go on.

There are a number of differences between languages that contribute to distortions in translation and interpreting. For example:

VOCABULARY

Languages do not mirror each other's vocabulary. The vocabulary that exists (or is used) in a given language will include words that are useful for the speakers' community. For example, English has a word for the guava fruit, as does Spanish (*guayaba*), Portuguese (*goiaba*), French (*goyave*) and Swahili (*mapera*). The Hungarian language does not have a specific word for this fruit, as it has never been cultivated or consumed in Central Europe. Also, languages tend to have a higher number of terms to describe a thing or phenomenon if it plays an important role in everyday life. This allows the speaker to demonstrate subtle differences just by choosing the right word. Other languages, where the same thing does not have a specific importance, may describe it with one expression, not allowing for subtle differentiation. For instance, in Spain, squid (a common food all around the country) can be called *calamar*, *sepia*, *choco*, *chipirón*, *jibión*, etc. depending on its size, the exact type, the way it is prepared and regional preferences. In Hungary (where this food is rarely consumed), all these types of squid would be commonly called *tintahal* ("ink fish"). This means that languages

- ! may not have any word to translate an expression from another language; or
- ! may not be able to transmit subtle differences when translating a term.

GRAMMAR

Languages have very different grammatical rules and structures. Some languages conjugate verbs, while others don't. In some languages there are strict rules on how to put the different words in order, while in others this is quite flexible. Some languages use prefixes and/or suffixes, others don't. Some languages have two or three genders, others don't have any. In most European languages, third-person personal pronouns specify the gender of the actor (he or she). In Semitic languages, even the conjugation of verbs express gender-related information (verbs have male and female forms). All this information is lost, if the message is translated into gender-neutral languages (such as Hungarian). Some languages use (or even have a preference for) the passive voice, while this does not exist (or is exceptional) in other languages. This means that in some languages it is easy to make statements about a certain fact or activity without specifying who the actor is, for instance, in English: "it's been done for a long time". If translated to a language which does not usually use the passive voice, the sentence will have to be somewhat modified by using another expression or grammatical structure. Another similar example is the use of tenses. Some languages (like English or Romance languages) use a complex set of tenses that are able to express subtle differences, such as whether a certain activity in the past was regular or a just a single occurrence, or whether it was completed or is still on-going. Other languages only operate with two (past and present) or three (past, present and future) morphologically different tenses. The messages "I did", "I was doing", "I had done" or "I have been doing" will all be translated using the same (past tense) form of the verb "to do" in a language which does not have such a variety of tenses. These very simple examples demonstrate that

- ! translating a message from one language to another will often require some sort of rephrasing in order to follow the grammatical rules of the target language; and that
- ! information expressed by gendered linguistic structures, subtle differences in tenses, voices and other grammatical features may be inevitably lost or distorted in this process.

STYLE

Languages also show significant style-related differences. As stated above, languages are part of wider cultural contexts. Therefore the dominant communication style (direct or indirect, emotionally expressive or reserved, individualistic or collectivist, low or high context, etc.) will have an impact on linguistic structures and even the development of vocabulary. Read also sub-sections 1 and 2 in Chapter VII.2 on communications styles. In some languages, speakers can choose from a variety of expressions, structures or conjugations to specify how formal the conversation is, while other languages have more limited means to express such differences (for instance, in European Portuguese there are three levels of formality, namely *tu* + second person for informal, *você* + third person for semi-formal and *o senhor/a senhora* + third person for very formal – English would simply use *you* + second person in all these cases). Some languages tolerate long, complex sentences well, while others would naturally cut these into shorter messages. Again, the list of examples could go on. What is important to keep in mind is that

- ! two languages may be very different in the style of verbal communication they "support" and therefore
- ! translation between such languages will inevitably involve some paraphrasing and loss of content (and this gap can only be bridged if the interpreter provides explanation or contextual information).

In addition, let's not forget that **the interpreter is a human being**. It is a common misconception that interpreters are machines that automatically transmit a message from one language to another.





## INTERPRETERS ARE NOT MACHINES

In reality, interpreters do their job like any other human beings. This has two particularly relevant consequences for credibility assessment:

- ✓ **Interpreters make mistakes.** Interpreting is a challenging and stressful task and even the best-trained and most experienced interpreter makes mistakes;
- ✓ **Interpreters have their own individual and contextual circumstances,** including cultural identity, age, gender, education, religion, stereotypes, etc. They are not neutral machines; they are all influenced by the factors presented in Chapter VII and VIII. Professional and specifically trained interpreters can learn how to *reduce* the impact of these circumstances on their work, but – as in the case of asylum decision-makers – it is not possible to completely eliminate the distorting effect.<sup>11</sup>

### EXERCISE IX.d

Do you think that these distortion factors have a similar impact in all translation situations? Are there certain circumstances that can increase the distortion impact in asylum interviews as compared to international business meetings for example? If you think there are such factors, write a list.

These potential sources of distortion are present in all situations of interpreting. Yet, there are number of factors which will determine the level of risk. These can be classified into two main groups:

<sup>11</sup> See Chapter VIII in Volume 1

LANGUAGE-RELATED SENSITIVITY

The more different the two languages are (as to their vocabulary, grammar, style, etc. – see above), the higher the risk of distortion is. For example, translating between Polish and Croatian, or Swedish and German (languages that belong to the same language family and which share a number of common characteristics) will not require much paraphrasing or changes in the order of the words, while it will be – at least relatively – easy to find the equivalent of every word, grammatical structure or stylistic element in the target language. Translating for example between Hausa and Finnish, or Tamil and Czech (distant languages in all aspects) will be a completely different exercise, which may require a lot more flexibility in translation, in order to communicate an understandable and grammatically correct message in the target language.

CONTEXT-RELATED SENSITIVITY

The context will also determine the risk of distortions, for example:

- The cultural and/or educational gap between the speakers – If the speakers have a similar background they are more likely to use the same codes and messages;
- The level of stress – In community/liaison-style interpreting, with a lower level of stress, there are more possibilities to ask for clarification, go back to problematic points, etc. In stricter, more stressful translation situations, under strong time pressure, the risk of making errors or losing details is often higher;
- The topic – Translating a conversation about topics related to private life will involve a much higher risk of distortions than interpreting at a business meeting. In the second case the discussion is mainly about material issues, numbers, payment conditions, etc., for which both parts have a similar, standardised system of codes and preparedness. When interpreting somebody’s personal life story there is a higher risk of distorting the content or misunderstanding key messages because of the cultural and other differences between the speakers, because of a higher level of emotional involvement, etc.;
- The specific preparedness and specialisation of the interpreter – Specialisation and targeted training can also reduce the risk of making errors and distorting the content. A high level of specialisation is not always possible, as it will depend on the needs (are there many such cases?), the financial profitability of the area, the availability of training courses and specific resources, etc.

EXERCISE IX.e

Imagine four translation situations:

- 1) An Italian businessman meets a Spanish businesswoman to discuss the conditions of a contract (they would like to trade in olive oil);
- 2) A Ukrainian construction worker applies for a residence permit in Denmark and is interviewed by the immigration authority for this purpose;
- 3) A Chinese and a Brazilian government delegation meet to negotiate the framework for a student exchange programme;
- 4) An Afghan asylum-seeker is interviewed by the asylum authority in Slovakia (he speaks in Pashto).

Compare these four situations as to the risk of distortions. Is there a significant difference between them?

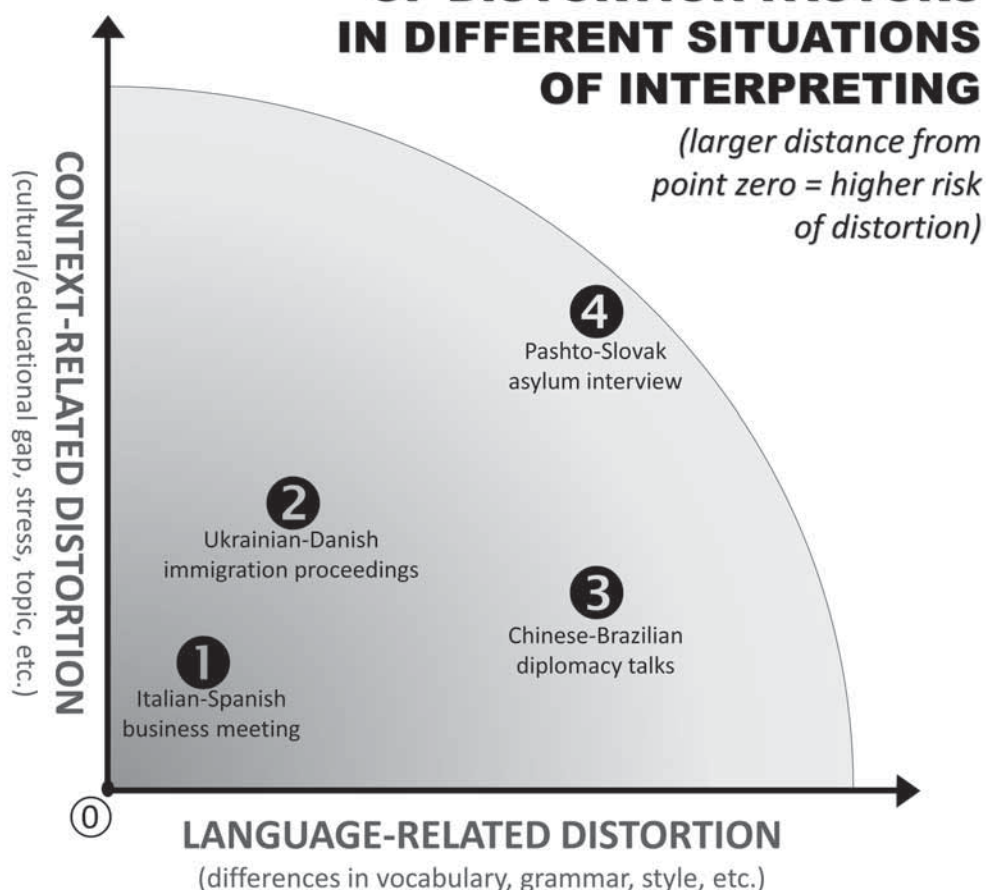
		1	2	3	4
Language-related sensitivity					
Context-related sensitivity	Cultural/educational gap				
	Stress level				
	Topic				
	Special preparedness				
RISK OF DISTORTION					

These translation situations differ significantly from each other. Let's see one possible solution for this exercise!

		1	2
<b>LANGUAGE-RELATED SENSITIVITY</b>		<b>insignificant</b> (languages very close to each other)	<b>low/medium</b> (Indo-European languages, with important differences)
<b>CONTEXT-RELATED SENSITIVITY</b>	<b>CULTURAL/ EDUCATIONAL GAP</b>	<b>insignificant</b> (same profession, same education, relatively small cultural distance)	<b>medium/important</b> (different educational background, cultural distance not too large)
	<b>STRESS LEVEL</b>	<b>relatively low</b> (relatively informal setting with only a few persons in the room, no administrative/legal obligations, possibility to correct errors)	<b>high</b> (formal setting, several administrative/legal obligations, limited possibility to correct errors)
	<b>TOPIC</b>	<b>neutral/not sensitive</b> (factual issues, numbers, conditions, clear "code system" for all actors)	<b>medium sensitive</b> (mainly factual issues – financial situation, labour contract, etc., but related to private life)
	<b>SPECIAL PREPAREDNESS</b>	<b>likely</b> (business interpreting is frequently needed and usually profitable)	<b>possible, but questionable</b> (interpreting in immigration procedures is often needed, but not necessarily very profitable)
<b>RISK OF DISTORTION</b>		<b>LOW</b>	<b>MEDIUM</b>

		3	4
<b>LANGUAGE-RELATED SENSITIVITY</b>		<b>high</b> (very distant languages)	<b>high</b> (very distant languages)
<b>CONTEXT-RELATED SENSITIVITY</b>	<b>CULTURAL/ EDUCATIONAL GAP</b>	<b>limited</b> (important cultural distance, but very similar educational and work-related background)	<b>from medium to very large</b> (usually very different educational background and large cultural distance)
	<b>STRESS LEVEL</b>	<b>very high</b> (very formal setting, no possibility to correct errors)	<b>high</b> (formal setting, several administrative/legal obligations, limited possibility to correct errors)
	<b>TOPIC</b>	<b>neutral/not sensitive</b> (factual issues, numbers, conditions, unambiguous code system for all actors)	<b>very sensitive</b> (private-life-related and intimate issues, strong impact of shame, stigma, intercultural barriers, etc.)
	<b>SPECIAL PREPAREDNESS</b>	<b>likely</b> (interpreting in diplomacy is frequently needed and usually profitable)	<b>unlikely</b> (the relevant caseload is usually limited, usually not very profitable, no standard training or selection schemes, presence of interpreters without formal education)
<b>RISK OF DISTORTION</b>		<b>MEDIUM</b>	<b>VERY HIGH</b>

## A SCHEMATIC OVERVIEW OF DISTORTION FACTORS IN DIFFERENT SITUATIONS OF INTERPRETING



Extraordinary circumstances that **limit the direct communication** between the interviewer, the interpreter and the asylum-seeker can further increase the risk of distortion. This usually happens when no interpreter is physically available in the two languages in question (for example, an asylum-seeker in Lithuania only speaks Lingala, but there is no Lingala-Lithuanian interpreter in the country). Authorities can usually resort to two solutions in such situations:

- ✓ Involving an interpreter who is **not present in the room**, but communicates through a remote connection (telephone, Skype, any other internet-based application or specific software or device developed for this purpose, etc.). This usually involves much lower sound and picture quality and thus **an inevitably limited and even somewhat distorted perception of spoken communication and non-verbal signs**;
- ✓ Involving an **intermediary interpreter** has to be involved (there are two interpreters in the room: one translates from Lingala to French, the other from French to Lithuanian). The duplication of intermediaries **duplicates the risk of distortion** – a phenomenon that can be called the **“Chinese whispers effect”**.<sup>12</sup>

As you can see from these examples, interpreting is a **very different task** in asylum procedures than in other areas of life, since **all factors that can increase the risk of distortions are usually strongly present**. Of course, there are asylum cases where the linguistic distance is small (for example the applicant speaks English and the procedure is conducted in French). Also,

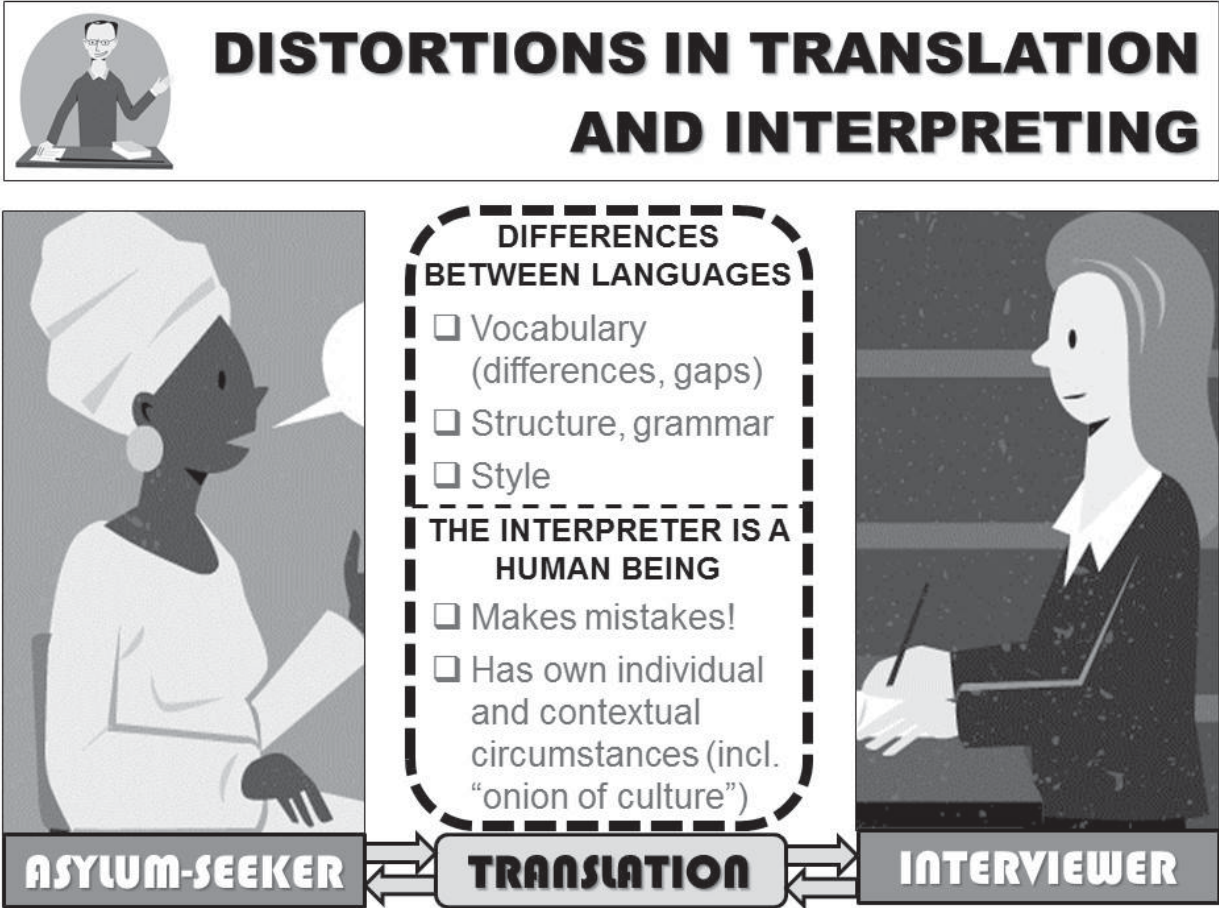
<sup>12</sup> Named after the popular child game called Chinese whispers or telephone in English, in which one person whispers a message to another, which is then passed through a line of people until the last player announces the message to the entire group. Distortions typically multiply in the retellings, so the statement announced by the last player usually differs significantly, and often amusingly, from the original message.



many asylum-seekers have a university degree or have participated in formal education; some of them may even be law professors or refugee law experts. However, practice shows the scenario described above (number 4) is quite typical for the majority of asylum cases in Europe.

For credibility assessment we should therefore bear in mind that:

- ✓ Interpreting in asylum cases will often cause a number of **significant distortions in content, style and wealth of details** (much more than in most other translation situations) – a fact that needs to be duly considered when applying credibility indicators;
- ✓ Interpreting in asylum cases is a **highly specific task** that requires **special preparedness and sensitivity** both from the interviewer and the interpreter;
- ✓ In asylum cases it will not be enough just to apply the usual professional norms and quality standards of interpreting, but there is a need for **additional methods and standards** that reflect the specificity of these translation situations; and finally
- ✓ While **consecutive interpreting remains the norm and the objective**, due to the above-presented special difficulties, asylum interpreting will have to use methods typical to **community/liason interpreting** as well, in order to bridge cultural, educational, etc. distances and ensure the actual transmission of messages in both directions.<sup>13</sup>



<sup>13</sup> Note that this approach has some support in literature as well, see for example: Robert Barsky, "The Interpreter as Intercultural Agent in Convention Refugee Hearings", in: The Translator, Volume 2, Number 1 (1996), pp. 45–63

## IX.2 Which language to choose?

### 1. Languages versus dialects

The first practical challenge is **choosing the appropriate language**. This may seem simple at first sight, but in reality it can be quite problematic. We may already face difficulties when making the seemingly easy distinction between languages and dialects.

#### EXERCISE IX.f

Are we talking about two languages or two dialects (within the same language)?

- a) Argentinian Spanish and European Spanish
- b) Czech and Slovak
- c) Hindi and Urdu
- d) European standard French and the French spoken in Québec
- e) Moroccan Arabic and Levantine Arabic
- f) Farsi (Persian in Iran) and Dari (Persian in Afghanistan)
- g) Mandarin Chinese and Cantonese Chinese
- h) Danish and Norwegian
- i) European Portuguese and Brazilian Portuguese
- j) High German (Hochdeutsch) and Swiss German (Schwiizerdütsch)
- k) Serbian and Croatian
- l) Turkish and Azeri

Was it easy to decide? What were the main factors on the basis of which you took your decision?

In the past centuries, linguists have elaborated a number of indicators that are supposed to help decide whether we are talking about **different languages or “only” different dialects**. These include for example – and most importantly – mutual intelligibility (persons speaking two dialects are expected to understand each other relatively well, but not if they speak two different languages); the existence of a standardised grammar (which languages are supposed to have, unlike dialects); the use in written and official communication (which is more typical for languages than for dialects); social status (which is usually higher for languages and lower for dialects); or official recognition.

Applying such indicators may be helpful, but in many cases will not be decisive. Serbian, Croatian and Bosnian, or Hindi and Urdu are mostly mutually intelligible, yet considered separate languages. There is a very good level of mutual understanding between Danish and Norwegian, or Czech and Slovak, yet no one would argue that these are the dialects of the same language. At the same time, Brazilians often have significant difficulties in understanding European Portuguese (especially in some parts of Portugal), given the great differences in pronunciation, vocabulary and even grammar.<sup>14</sup> Films and TV programmes in *français québécois* are often subtitled in French on international TV channels, otherwise non-Canadian French-speakers

<sup>14</sup> For example, the sentence “I told you that you should get off the bus at this stop” would sound “Disse-te que tinhas de descer do autocarro nesta paragem” in Portugal, but would be most probably said like “Eu falei pra você que você tinha que descer do ônibus neste ponto”. The two varieties use different verbs for *to tell*, different person and conjugation for the informal you (second versus third person), a different word for both *bus* and *stop*, a different position for object personal pronouns (before or after the verb), and one often omits subject personal pronouns, while the other does not usually allow for this.

may face serious difficulties in understanding it. Speakers of German dialects may also face not negligible obstacles in understanding each other, while certain linguists argue that the distance between Chinese “dialects” is similar to or even larger than the one between different Romance languages (like between Spanish and French).

Arabic is probably the language which provides the best example of the importance of this dilemma. First, because Arabic is the mother tongue of a large part of asylum-seekers arriving in Europe. Second, because in reality it covers a wide range of highly diverging local dialectal variations, as well as Classical Arabic (for example the language of the Quran) and Modern Standard Arabic (based on Classical Arabic, used in official contexts, higher education, a part of the media, etc.). The different local dialects and Modern Standard Arabic show significant differences in pronunciation, grammar, conjugations and vocabulary. Given the large geographical extension of the territory where Arabic is used as a first or second language, the lack of administrative unity for several centuries and the different external linguistic influences (for example French in North Africa and Persian in the Gulf) these dialectal variants are in general very distant from each other (and some of them from the standardised version, too). In general, the larger the geographical distance is, the more limited the mutual intelligibility will be between two dialects of Arabic.<sup>15</sup> It is very likely therefore that a person speaking the Moroccan or Algerian dialect of Arabic will have significant understanding difficulties with a person speaking the Iraqi or Gulf version. Here are some interesting examples to show to show the lexical differences between the various versions of Arabic language:<sup>16</sup>

English	Modern Standard Arabic	Iraqi Arabic	Egyptian Arabic	Levantine Arabic	Moroccan Arabic
How are you?	Keif ha'alak?	Shlonik?	'Zeik?	Kifek?	Labas alik?
Woman	Seida / Nissa'	Niswa'an	Sita'at	Hareem	Mra
Man	Radzhul	Ridza'al	Ra'aghil	Zalama	Razhal
Good	Dzeid	Zein	Kweis	Mneeh	Mezyan

So how can we distinguish between different languages on one hand, and “only” different dialects or language versions on the other? Without engaging in academic debates, we could conclude that probably the most pertinent explanation was provided by Yiddish sociolinguist Max Weinreich in 1945, who concluded that “A language is a dialect with an army and navy”, referring to the fact that **the distinction depends much more on political will and power, rather than objective linguistic indicators**. This is why mutually intelligible languages can still be considered as different languages (if for example they play a role in forming or strengthening national identity or political independence), and rather unintelligible language versions can be considered as dialects of the same language (if there is a willingness to emphasise unity among different countries or regions, or if there are strong, unifying cultural traditions or historical experiences, for instance).

<sup>15</sup> Consider the impact of education and asymmetric intelligibility, as explained later in this chapter

<sup>16</sup> Based on: Majda Sabri Faris, *Varieties of Spoken Arabic: The Representation of Some Phonological and Lexical Differences in Iraqi, Egyptian and Levantine Series*, Al-Mustansiriah University, 2014 – with simplified English phonetic transcription



## 2. Pidgins, creoles and beyond

In order to understand the actual challenge of multilingual communication in the asylum context, we should also become familiar with the concepts of **pidgin and creole**.

**Pidgin languages are so-called “contact languages”, originating from situations where different groups of people, who do not share a common language, need to communicate with each other.** The purpose of communication is limited; it is usually related to trade or other economic activities and interactions.<sup>17</sup> Here are some of the main characteristics of pidgin languages:

### PIDGIN LANGUAGES ...

... are usually based on the vocabulary of a specific language (the “dominant” language in the region, usually – but not necessarily – the language of the formal colonial power). Many Pidgins in the world are based for example on English, French, Portuguese, Dutch or Malay.

... have loanwords from a number of other languages, too. For example, Cameroonian Pidgin English has *sabi* (*saber*=to know) and *pikin* (*pequeno*=small) from Portuguese, *buku* (*beaucoup*=many) and *gato* (*gateau*=cake) from French, as well as *kombi* (friend) and *ngomba* (snake) from indigenous languages.

... have a limited vocabulary, given the limited scope of usage (interaction between different language groups for trade, administrative matters, etc.), with several words having multiple meanings.

... have a relatively simple phonetic system, usually with only a few basic vowels, no consonant clusters and no complex tonality system.

... have very simplified grammar. For example, Pidgins usually have no grammatical markers for gender, number, case, tense, etc., express tenses lexically (by using temporal adverbs) rather than by different conjugations, and often express plurals and superlatives by the reduplication of the word (*talk talk* is a long chat and *today today* means immediately in Nigerian Pidgin English).

... are usually second (and not vernacular) languages, they are not the mother tongue of anyone.

**Creolisation** is the process through which a pidgin **becomes a vernacular language** (the mother tongue of a certain part of or the entire population), partly or fully replacing the indigenous languages of the area. A number of factors may accelerate this process, such as the prohibition of speaking indigenous languages (for example, African slaves were frequently prohibited to use

<sup>17</sup> The word *pidgin* itself may also reflect this. According to the leading (yet not unanimously accepted) theory of origin, this word comes from a 19th-century Chinese mispronunciation of the English word *business*.

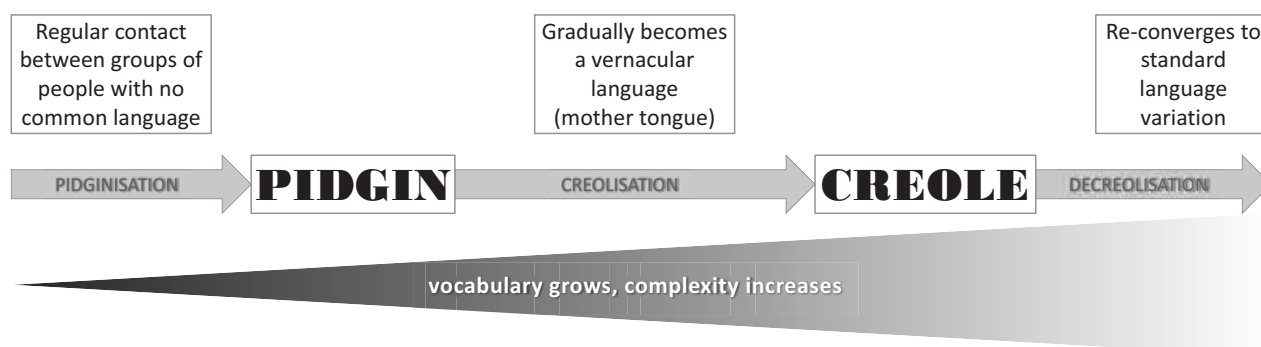


their mother tongue in the Americas). Creolisation is usually accompanied by the **enrichment and diversification of vocabulary** (as it now has to cover all areas of life). Creole languages can reach the status of official language, especially if it is promoted in support of strengthening national identity (the 1987 Constitution of Haiti recognised the *Kreyòl* as official language that “unites all Haitians”) or unity in a multi-lingual and multi-ethnic context (as it happened with *Bahasa Indonesia*, Indonesia’s official language that has its roots in Pidgin/Creole Malay).

In some contexts, this process turns into a phase of **decreolisation**, when the creole language **converges with the standard language** from which it originally derived. This is often related to frequent exposure to the standard language variety (for example through television), as well as the social and political status of different varieties (the creole seen as low-class, rural and/or uneducated, while the standard variety perceived as higher-class, urban and/or educated). A current phenomenon of decreolisation is reported by linguists in Jamaica (English) and Cape Verde (Portuguese), for example.

Pidgins and creoles are present in most regions of the world, but are most common in the Caribbean, in West Africa, South-East Asia and the Pacific region. Many historical pidgins and creoles are now extinct, such as the Pidgin French of the colonial times in Vietnam, the 19<sup>th</sup>-century Pidgin English of Canton Province in China or the medieval Basque-Islandic Pidgin.

Note that Pidgin and Creole are **technical terms** used by linguists, but **not necessarily by the actual language users**. For example, the speakers of Hawaiian Creole English call their language *Pidgin*, while the Pidgin English of Sierra Leone (widely spoken as a second language) is called *Krio*.<sup>18</sup>

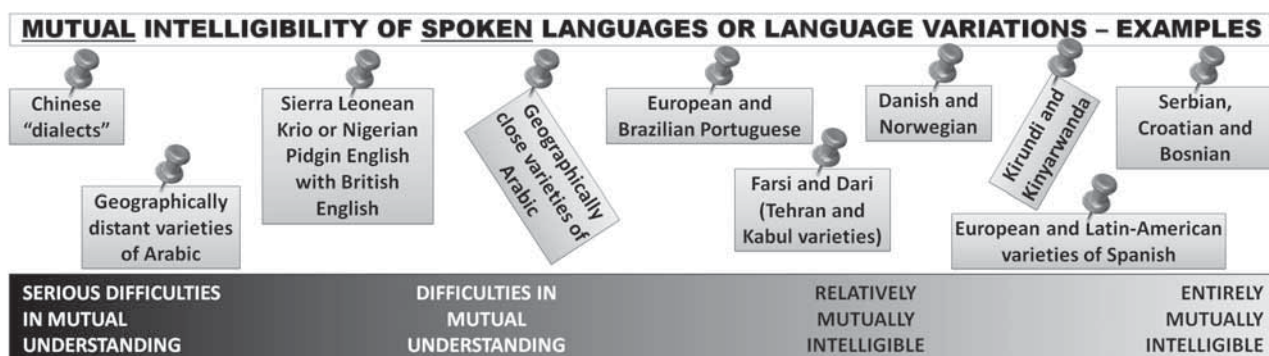


### 3. Factors influencing mutual understanding

As you can see, a number of language varieties exist and **using an “English”, “Chinese” or “Arabic” interpreter, for example, will not, in itself, ensure proper communication** between the asylum-seeker and the interviewer. Here are some further factors that can determine the language variety spoken by the applicant and the level of intelligibility (mutual understanding) between her/him and the interpreter:

<sup>18</sup> Krio can only be considered as a Creole language for a small minority of the Sierra Leonean population who speak it as a mother tongue.

Education	<p>In social contexts characterised by the presence of multiple languages and/or diglossia<sup>19</sup> the actual language or language variety spoken/understood by an asylum-seeker will be strongly influenced by her/his educational background. For instance, a Tunisian lawyer and a Lebanese cardiologist are likely to be able to communicate without difficulties in Modern Standard Arabic (or French) – even if their own dialects of Arabic differ significantly. Two persons with limited formal education from these two countries may have significant communication gaps, as they are likely to speak only their own, mutually not sufficiently intelligible dialects. Persons who attended formal (especially higher) education in English language in West-African countries may be fluent in the standard variety of English and may be able to use it (in formal contexts) interchangeably with the local pidgin version (in informal contexts of inter-ethnic communication). Others with less formal education and/or no education in standard English would only be able to speak the pidgin variety.</p>
Gender	<p>In some contexts, the gender of the applicant may also influence her/his language knowledge (in close connection with education). In multilingual societies where women have less or no access to formal/higher education, and/or where they participate less in formal labour activities outside the family home, women whose mother tongue is different from the official language of the state may be less likely to speak the latter (or even the <i>lingua franca</i> or pidgin used for inter-ethnic communication) than men.</p>
Living environment	<p>In multilingual contexts, persons living in an urban environment may be more likely to speak the official language of the state and/or the <i>lingua franca</i> or pidgin used for inter-ethnic communication than those living in a rural area, where the need for such communication may be less likely.</p> <p>Also, constant exposure to other dialects or language varieties than one's own may also influence language usage. For example, an Afghan refugee who lived several years in Tehran may now speak the Tehrani variety of Persian rather than his native Dari from Afghanistan (meaning that he is not necessarily lying about his Afghan origin, just because he sounds like someone from Tehran). On the other hand, it is also possible that a Cuban refugee living in Spain for two decades still preserves the Cuban variety of Spanish. The likelihood of adaptation will depend on a number of factors such as age, personal preferences (preservation of identity versus assimilation), individual ability to absorb new accents, etc.</p>
Asymmetrical intelligibility	<p>The level of understanding is often asymmetrical between different language varieties. Versions which are considered as standard, which are widely spoken or used in the media, or to which a higher social or cultural value is attached may be well understood (not necessarily spoken) by speakers of other varieties. At the same time, these other varieties may not be understood by those speaking the standard or otherwise “privileged” version. For example, the Egyptian dialect of Arabic is relatively widely understood throughout the Arab world because of its long-standing use in pop music and films (while this is not true for any other local dialect). A speaker of Nigerian Pidgin English may well understand other, standard varieties of English (North-American, British, etc.) due to a frequent exposure to it on television, in music, etc. At the same time, a British person is likely to face significant difficulties when trying to understand Nigerian Pidgin English. Such asymmetric relations are very common around the world (European French well understood by Canadian French speakers, High German by Swiss German speakers, Iranian Farsi by Dari or Tajik speakers, Brazilian Portuguese by European Portuguese speakers, etc. but very often not vice versa).</p>



<sup>19</sup> The use of different language varieties (or languages) that co-exist in a society in different situations (for example local dialect or pidgin in everyday conversations, and standardised language in official procedures and media)



Linguistic diversity is extremely complex. Languages cannot be considered as monolithic constructions. There are different languages that are mutually intelligible, while some languages have dialects that are not intelligible. The qualification as language, language variety, dialect, etc. depends more on political will and traditions than on objective linguistic indicators. Intelligibility is very often asymmetric “in favour of” the language variety considered as standard, used in mass media and/or given higher socio-cultural value.

A number of individual and contextual circumstances determine an asylum-seeker’s ability to properly understand and speak a specific language variety. These include education, gender and living environment. When choosing the right language and interpreter for the asylum interview all these factors must be duly considered, otherwise there is a high risk of language-related distortions in the communication and credibility assessment process.

### IX.3 Practical challenges and examples

The above difficulties can result in a number of interferences in the interpretation process, and this risk is even higher in the asylum context than in most other translation situations.<sup>20</sup> These interferences may then **lead to fundamental distortions** (and even erroneous conclusions) in the credibility assessment process. There are various ways to classify interferences in translation; one option is to distinguish between **technical and semantic interferences**. Let’s see a few practical examples for both:

#### 1. Technical interferences

A technical interference means that **the receiver of the information perceives the intended information in a distorted or defective manner**. The reason behind this type of interference may be for instance:

Gaps in vocabulary

Interpreters may have excellent language skills and preparedness, yet there will always be gaps in their vocabulary. Considering the specificities of asylum interpreting (large cultural distance, high stress, intimate topics, etc. – see earlier), the probability of encountering unknown words may be more likely at asylum interviews than in other, more predictable situations (for example business interpreting). As gaps in vocabulary are usually considered as an indicator of a lack of professionalism, interpreters may be reluctant to acknowledge the communication gap and may substitute the term in question with something else, or miss out the entire message.

- **Example:** Region-specific terms may cause specific difficulties. A highly qualified English interpreter may easily fail to understand the sentence “he practised juju on me” by a Nigerian asylum-seeker, even if the applicant speaks Standard English with a pronunciation understandable for the interpreter, as the term *juju* is only used in West Africa.

<sup>20</sup> See more on this earlier in this chapter

The applicant and the interpreter may often speak a different language variety. While professional interpreters are usually prepared to deal with different pronunciations or some dialectal differences, such skills always have their limits (i.e. there may always be some unknown dialects or pronunciations). This factor can be multiplied if the language variety spoken by the applicant is a Pidgin or Creole, or if it uses words from a local Pidgin or Creole, even when speaking the standard language version. Stress, trauma, a high speed of talking, or great differences in educational background can all contribute to understanding difficulties in this context.

- **Example:** The author witnessed the court hearing of a female Nigerian asylum-seeker in Hungary, with a highly qualified English-Hungarian interpreter, with significant experience in interpreting in formal settings for British, Irish and North-American persons. There were serious communication difficulties between the applicant and the interpreter throughout the entire hearing. The applicant (who had a very modest educational background) often failed to understand the sophisticated English sentences of the interpreter. The interpreter, on the other hand, had serious difficulties in understanding the applicant's pronunciation and dialectal/Pidgin-like expressions. For example, the term *widowhood rituals* (a central element in the applicant's story) was consequently understood and translated as *voodoo rituals*, seriously distorting the perception of the applicant's story and the credibility assessment process.

As interpreters are human beings, they can also simply mishear, misunderstand or mispronounce words, even if no gaps in vocabulary or significant dialectal differences are involved.

- **Example:** The author witnessed the court hearing of a Palestinian asylum-seeker in Hungary, where the experienced Arab-Hungarian interpreter consequently translated *tourist* instead of *terrorist*, when interpreting the applicant's sentences. This introduced an implausible and contradictory element into the applicant's story, causing serious confusion in the credibility assessment process (the mistranslation was only clarified at the end of the hearing, following explicit questions by the judge).
- **Example:** At a training event, an asylum officer from a European country reported another demonstrative example, namely that of an asylum-seeker from a West African country, who was interviewed in English. He identified his profession as carpenter. At a later interview, when explaining his story in detail, he claimed that he used to work with cars. This contradiction played an important role in questioning his credibility – until the point the proceeding authority realised that he actually said *car painter*, and not *carpenter* at the first interview, and the interpreter simply misheard what the applicant said.



## ONE WORD CAN MAKE A HUGE DIFFERENCE



## 2. Semantic interferences

A semantic interference occurs when **the receiver attributes a different meaning to the signal than the speaker**. The main difference with technical interferences is that in this case the receiver **formally understands** the original message (decodes the same group of sounds/words as intended by the speaker), but in reality, she/he understands it in a different way. Again, the reasons behind these interferences can be numerous, here are some important examples:

### MULTIPLE MEANINGS

In each language, there are several words that have multiple meanings. In many contexts, it will be evident which meaning is referred to, however, there may be situations where this is unclear, leading to a serious misunderstanding in the communication process.

- **Example:** The author witnessed an asylum case, where the applicant (who was interviewed in French) claimed that he had escaped from prison with the help of his parents. However, he also claimed that his parents had died long ago (years before his incarceration). This, as a material contradiction, led to his credibility being questioned and his asylum claim rejected. In the appeal phase, however, the judge (who accidentally happened to speak French well) easily found out with clarifying questions that while referring to his parents who died long ago the applicant actually referred to his *parents*, and when claiming that his parents helped him escape from prison he referred to his *relatives* – as in French the word *parents* can mean both *parents* and *relatives*. With this clarification the whole story started to “match” and finally the applicant was recognised as refugee.<sup>21</sup>
- **Example:** Regional diversity, again, can cause difficulties. For example, the expression *free woman* is used to describe a prostitute in Nigerian usage (both in the standard and the pidgin version). If the interpreter is not aware of this, she/he will attribute to the sentence “I was forced to become a free woman” a meaning like “I was forced to become independent”, instead of “I was forced to become a prostitute”. Another similar example is the case witnessed by the author, where the credibility of an Anglophone Cameroonian asylum-seeker was questioned based on his statement that after his arrest, he was transported, together with his friend who was also arrested for political reasons, to the jail on a *motor*, which also carried the driver and some policemen. This statement was not believed (and, together with other minor contradictions, led to the rejection of the claim), since so many people cannot fit on a *motor*. The problem was that while *motor* was understood and translated as *motorcycle*, actually in West African English usage a *motor* or *moto* refers to a car or any larger vehicle. This misunderstanding was discovered in a subsequent asylum procedure and helped clarify the inconsistency of the story, later resulting in the recognition of refugee status.

### CULTURAL CONTEXT

Language is only one manifestation of a much broader cultural context.<sup>22</sup> Culture determines the actual content of words. The decoding of messages is sensitive to the cultural context in which they will be interpreted. Both the interpreter and the interviewer filter the message of the asylum-seeker through their own cultural filter, and this has a clear impact on the interpreting process.

- **Example:** Imagine the word *breakfast*. Breakfast is a universal concept, since it is a basic biological need to eat something (to get energy) after sleeping. It is therefore usually easy to find the unequivocal translation of the term, from *esmorzar* in Catalan through *Frühstück* in German and *quraac* in Somali to *nri ɣtɣtu* in Igbo. However, the picture that comes up in our mind when hearing this word will be completely different, as breakfast traditions differ around the world to an impressive extent. Environment may also play a role: for example the word *mountain* should have a translation in every language. Yet it may mean something completely different in mountainous and rather flat countries.<sup>23</sup>

<sup>21</sup> Similarly striking examples are reported in literature as well. For example, one article reports two cases in which the interpreter’s “unfortunate” choice between the multiple meanings of the Spanish word *fracaso* (economic failure vs. physical harm) and the Kurdish word *chêst* (dinner or generic word for meal) mislead the entire credibility assessment process. See: Moira Inghilleri, “Habitus, field and discourse: Interpreting as a socially-situated activity”, in: *Target* 15(2), 2003, pp. 243–268.

<sup>22</sup> See Chapter VII in Volume 1 on culture and culture-related issues in credibility assessment

<sup>23</sup> For instance, the fact that the 235-metre-high *Gellért-hegy* in the centre of Budapest (the capital of one of Europe’s less mountainous countries) is called a mountain (Mount-Saint-Gerald) often provokes a smile among tourists.

- **Example:** Culture-based misinterpretation of terms often concern personal relationships. The word *brother* is used for male siblings in most European linguistic contexts. At the same time, in different usages in Africa, the Middle-East, Latin-America and even the African-American slang in the United States, *brother* may also indicate a close friend, a fellow member from a political movement, any male relative from the same age group, or even the “other guys from my village”. Time-related concepts may also cause difficulties, as they are strongly determined by local customs. While *lunchtime* would refer to 12 AM in Ecuador, it means 2–4 PM in Spain, even though the two countries use the same language. In Hungary 6 PM is called *evening*, while in Spain 8 PM is still considered *afternoon*. And so on...





## SUMMARY

Interferences occur in every interpreting situation, and they are particularly common in the asylum context, given its specific characteristics. Technical interferences occur when the receiver of the information perceives the intended information in a distorted or defective manner, because of gaps in her/his or the interpreter's vocabulary, the difference between language varieties or simple mistakes.

Semantic interferences occur when the receiver, while formally understanding, attributes a different meaning to the signal than the speaker. Because of multiple meanings and the differences of cultural contexts the fact that it is technically possible to translate a term without difficulty does not mean that the translation will not be semantically distorting.

### IX.4 Reducing the distortion

The numerous difficulties and distortions presented in this chapter **may have an impact on each credibility indicator**. Differences in style or vocabulary between languages can influence the number of details that are provided. Technical or semantic interferences – and thus misunderstood information – may cause discrepancies between what the applicant says and what is reported by witness evidence or country information. Yet distortions caused by language-based interferences are **most typically related to internal consistency** (see basically all practical examples in this chapter). The limited available body of empirical research also confirms that **distortions are much more frequent than generally expected**, due also to unclear or divergent expectations, lack of intercultural competence, or improper selection of interpreters.<sup>24</sup>

Therefore asylum professionals should be **very attentive to eventual language-based distortion factors** in the communication process. Beyond the general standards for interpreting (for instance using first person in communication, etc.), here are 10 recommendations that should help reduce the margin of error and the distortion impact in credibility assessment:

<sup>24</sup> See for example: Deborah E. Anker, “Determining Asylum Claims in the United States: Executive Summary of an Empirical Study of the Adjudication of Asylum Claims before the Immigration Court”, in: Howard Adelman (ed.), *Refugee Policy: Canada and the United States*, Toronto, p. 272; Marco Jacquemet, “Transcribing refugees: the entextualization of asylum seekers’ hearings in a transidiomatic environment”, in: *Text & Talk* 29-5 (2009), p. 529; Nienke Doornbos, “On being heard in asylum cases – Evidentiary assessment through asylum interviews”, in: Gregor Noll, *Proof: Evidentiary Assessment and Credibility in Asylum Procedures*, 2005, pp. 119–120; etc.

PREPARATION	1	Identify the right language	It may often not be enough identify that the applicant speaks English or Arabic. Which dialect or variety? Is it far from a standard version usually spoken by interpreters? Is it a Pidgin or Creole version in reality? Are there any specific individual or contextual circumstances that may affect the language used and the limits of communication (education, gender, etc.)? <sup>25</sup>
	2	Use the right interpreter	Not just anyone can be an interpreter in asylum procedures. Asylum interpreters must be trained, carefully selected and they must have specific skills to effectively deal with the asylum context. The interpreter must be able to communicate properly in the language variety the applicant speaks, not just any standard version of that language. The interpreter must be trained on what the asylum procedure is, on her/his specific role <sup>26</sup> and legal obligations, on intercultural competence, on trauma-related issues, etc. The applicant must feel free to talk in the presence of the interpreter (consider gender, cultural identity and other individual circumstances). Especially sensitive cases may require specifically trained interpreters. <sup>27</sup>
	3	Make sure all parties understand each other	Ask the asylum-seeker and the interpreter to talk for a few minutes before the actual interview starts (mutual understanding cannot be tested in only a few sentences). Standard topics can be used for this purpose as well. Brief the interpreter on the case, for example some basic information on the applicant, the case and any eventual difficulty you may encounter during the interview, so that she/he understands the context. <sup>28</sup>
DURING THE INTERVIEW	4	Use short and clear questions	If asking a complex or longer question, or using complex or sophisticated vocabulary cannot be avoided, then double-check whether the interpreter indeed understood it.
	5	Be aware of cultural relativity in verbal communication	Even the most basic words and expressions can mean something different for the asylum-seeker than what they mean for you. Avoid as much as possible culturally sensitive terminology and ask for clarification whenever something does not “fit” the story. Pay specific attention to this when talking about personal relationships, time, or other issues related to private life, spirituality, etc. Brother, spring or religion may mean something very different to your client.
	6	Control and help the interpreter	Continuously check the interpreter. If the translated question or response is much longer or shorter than the original one, if the answer is implausible, contradictory, or does not “fit” the story, ask for clarification and confirmation. Make sure the interpreter always understands your question and does not feel embarrassed to ask back if she/he doesn't.
	7	Use voice recording with the consent of the applicant	Most EU member states' legislation allows for this possibility. This is the only secure way that allows you to check what was actually said and translated during the interview (both during the credibility assessment process and later in any eventual appeal). This can also easily prevent any incorrect use of the argument of mistranslation.
AFTER THE INTERVIEW	8	Be aware of inevitable interferences when identifying inconsistencies	Remember that technical and semantic interferences in asylum interpreting are very common. Suppose that minor or completely implausible semantic differences (and therefore internal credibility inconsistencies) are usually just the consequences of translation interferences. Talking first about a town and then a city, or referring to a tourist and then to a terrorist are most probably not real inconsistencies. Credibility assessment should not be based on such findings.
	9	Double-check that material inconsistencies are not due to language interferences	If you identify material inconsistencies (which may therefore play a role in credibility assessment) always check first whether they are not simply the result of translation interferences. If the inconsistency is based on fundamentally different statements (the applicant talks about long detention, but later claims that he was not detained) this explanation is less likely (though not excluded) than if only one or two elements are inconsistent (the applicant claims that his parents died, but then also that his parents helped him escape from detention).
	10	Provide systematic feedback to interpreters	Interpreters are human beings, their task is difficult and stressful, even more so in the asylum context. Sincere feedback on their work will help them improve, as well as adapt to the specific challenges of the asylum framework (for which they may have never been specifically trained).

<sup>25</sup> Cf. the legal obligations for an individualised credibility assessment (and asylum decision-making), see Chapter III in Volume 1

<sup>26</sup> See below

<sup>27</sup> See relevant considerations in Chapters X and XI

<sup>28</sup> Also recommended by: European Asylum Support Office, *EASO Practical Guide: Personal interview*, December 2014, p. 10



Besides this practical advice, both the interviewer and the interpreter her/himself should be aware of and respect the role and limits of the interpreter, which can be summarised as follows:

<b>THE ROLE AND LIMITS OF THE INTERPRETER</b>	
<b>CANNOT / SHOULD NOT</b>	<b>CAN / SHOULD</b>
<p>The interpreter is <u>not the leader of the conversation</u>, so she/he cannot</p> <ul style="list-style-type: none"> <li>■ add/omit questions or ask her/his own questions;</li> <li>■ significantly rephrase the questions or answers;</li> <li>■ adduce significant new messages to the conversation.</li> </ul>	<p>On the other hand, the interpreter should <u>help bridge the usually large communication gap</u> between the two speakers,<sup>29</sup> and for this should</p> <ul style="list-style-type: none"> <li>■ indicate to the interviewer if she/he has the impression that the asylum-seeker does not properly understand a question or message;</li> <li>■ inform to the interviewer about any potential misunderstanding or miscommunication, even if it only becomes known at a later stage of the interview;</li> <li>■ on a strictly exceptional basis, if significant rephrasing would be required in order to ensure the transmission of a message, she/he should explain the reason and ask permission from the interviewer.</li> </ul>
<p>The interpreter is <u>not the representative of the applicant</u>, so she/he cannot</p> <ul style="list-style-type: none"> <li>■ give advice to her/him or suggest any particular response or behaviour;</li> <li>■ distort the information provided by the asylum-seeker in order to make it more (or less) favourable for her/him;</li> <li>■ “beautify” the applicant’s message in order to avoid vulgar, politically incorrect, etc. terminology or to sound more coherent.</li> </ul>	<p>Yet given the extreme vulnerability of most asylum-seekers, as well as the difficulty of revealing sensitive and private information in an official context, the interpreter should <u>behave in a supportive, yet neutral way</u>, for example by</p> <ul style="list-style-type: none"> <li>■ informing the interviewer if the applicant has difficulties in talking, needs time or a glass of water;</li> <li>■ sitting next to the applicant or between the two speakers, rather than next to the interviewer;</li> <li>■ strictly avoiding any signs of boredom, stress, impatience or disapproval;</li> <li>■ ensuring the applicant both in words and body language that she/he will do her/his best to translate everything accurately, etc.</li> </ul>
<p>The interpreter is <u>not in charge of credibility assessment</u>; therefore she/he cannot make comments or suggestions regarding the credibility of the applicant’s statements, nor should she/he provide (or be asked to provide) country information.</p> <p>In all jurisdictions there are formal procedural rules concerning the use of expert evidence. The interpreter is <u>not an expert witness</u>, therefore she/he cannot deliberately provide information on the dialect, language version, style or pronunciation the applicant uses (see exceptions in the box on the right). Such information may have a crucial impact on credibility assessment and thus all <u>fair procedure safeguards</u> relevant to expert evidence should apply.</p> <p>(NOT PERMITTED – example: turning to the interviewer after the interview and saying “This woman says that she is from a village in Sierra Leone, but her English is just too good for this to be true, she is supposed to speak Krio” or “I don’t think this man is from Afghanistan, he speaks Persian with a Tehrani accent”)</p>	<p>The interpreter should <u>indicate as soon as possible</u> if there are <u>understanding difficulties</u> between her/him and the applicant, and if this is due to the fact that the applicant speaks a different language, language version or dialect than the interpreter (or than what the applicant claims to speak). This statement must be properly registered in the interview records and the applicant must have the opportunity to provide an explanation or counter-arguments.<sup>30</sup> If necessary, the interview should even be stopped until a suitable interpreter can be found.</p> <p>(PERMITTED/REQUIRED – example: turning to the interviewer at the beginning of the interview and saying “The applicant claims to be Syrian, but he speaks a very different dialect of Arabic, in which I am not fluent and we don’t understand each other well”)</p> <p>Interpreters, linguists or anthropologists can be used as <u>experts</u> (for example in order to establish the dialect the applicant speaks), but such opinions can only be given in formal procedures, in which</p> <ul style="list-style-type: none"> <li>■ the expert has <u>specific expertise</u> on the topic (the mere fact of speaking Modern Standard Arabic and the Iraqi dialect does not mean that an interpreter is an expert in recognising all different local versions of the Arabic language);</li> <li>■ there is a <u>clear, written statement</u> regarding the conclusion (not just a simple, informal oral statement);</li> <li>■ the <u>possibility to challenge or rebut</u> the conclusion is ensured, together with all other relevant <u>fair procedure safeguards</u>.</li> </ul>

<sup>29</sup> See the reasons in detail earlier in this chapter (in sub-section 3 of Chapter IX.1)

<sup>30</sup> This obligation can be deducted from EU law, see standard 10 in Chapter III, in Volume 1

## HOW CAN YOU BE BETTER PREPARED TO DEAL WITH MULTILINGUAL CHALLENGES IN CREDIBILITY ASSESSMENT?

### Knowledge

Learn about linguistic diversity in the world; learn more about how languages differ as to their vocabulary, grammar and style;

Learn about the languages and dialects used in the countries where your clients come from;

Learn about the translation and interpreting process and their specific techniques;

Read more about typical mistakes in asylum interpreting and the prevalence of interferences in the translation process;

### Skills

Practise how to make short, easily translatable questions;

Practise how to avoid intercultural distortions in vocabulary (for example by spotting problematic terms in a previous interview record and trying to substitute them with something else);

Learn how to bridge vocabulary gaps (how to talk about concepts which do not exist in your or the applicant's cultural context, or which can sometimes only be described with offensive terms in the applicant's country of origin – such as homosexuality, religious conversion, adultery, etc.);

### Attitude

Accept the inevitable distortion that is inherent to any translating process; accept that interpreters are not machines and that what they translate is only a more or less distorted mirror of the applicant's statements;

Be aware of the specific challenges of the asylum context;

Learn at least the basics of a language very different from yours in order to understand the fundamental difficulty of translating between distant languages;

Try yourself as an interpreter, even if only in informal situations.

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*Solution of Exercise IX.a: szavahihetőség means credibility in Hungarian, all the other words mean refugee*

# X. GENDER AND CREDIBILITY ASSESSMENT

## SETTING THE SCENE

Gender has a crucial impact in most spheres of life. Long neglected, in recent decades gender has become a central issue of human rights, and has been increasingly discussed within the asylum context. **Gender strongly influences the credibility assessment process** in asylum procedures. This chapter focuses on how to take gender into account in this context.

Many asylum-seekers may have **experienced persecution because of their gender**. Examples of such harm include rape, sexual violence, domestic violence, forced marriage, female genital mutilation (FGM), honour-based violence, forced conscription, trafficking, etc. These types of harm are particularly likely to affect women and girls (who in recent years made up one third of the asylum-seekers arriving in the EU), although they can also affect men and boys. How asylum applicants present their evidence may be affected by their gender, and how decision-makers interpret their evidence may relate to their gender.

This chapter will help you:

- ✓ Understand the **concept** of gender and other related terms;
- ✓ Effectively tackle the **gender-related distortion factors** when applying credibility indicators; and
- ✓ See how gender **influences the decision-maker** and the credibility decision-making process.

Credibility assessment in asylum cases based on sexual orientation and gender identity (as a highly specific matter) will be dealt with separately in Chapter XI.

## X.1 Understanding gender

### 1. Gender – why does it matter?

#### EXERCISE X.a

Maria-João is a 21-year-old young woman. She is single, and lived in a village with her family, in a mountainous region. For years, her family, like many others in the region, has been supporting the independence of this region from the rest of the country and the struggle against the political and ethnicity-based oppression by the central government. As women are usually not admitted as combatants, Maria-João supported the local anti-government guerrilla in other ways. She cooked for the fighters, repaired their clothes and assisted the healer of the village as a nurse if any combatant was injured and required medical care.

One day, the military cracked down on the local guerrilla and many combatants were killed or detained. Somebody might have reported about how Maria-João had supported the fighters, as she was also arrested and taken to a jail in a nearby city. She was detained in a small cell without windows for several weeks. She was only given some bread and water, for which she became very weak and had constant stomach-ache. The local police chief questioned her on several occasions, trying to get information about who funds the guerrilla and who provides them with weapons. Maria-João had no idea about all this. As she could not answer, the police chief and the guards repeatedly beat her up and raped her. In these conditions, Maria-João's health deteriorated rapidly. She became very thin, lost a few teeth and was vomiting regularly. After two months, the police chief realised that Maria-João had indeed no information about the guerrilla's background infrastructure. Also, he and the guards lost "interest" in Maria-João's sexual exploitation, as her health status was deteriorating. Therefore the police chief released her saying "Go home and tell everyone what happened to you and what will happen to anyone who supports the guerrilla".

Maria-João went home and stayed in bed for weeks until she got a bit better. By then she had realised that she was pregnant. When this became known, Maria-João's father and older brother became furious, disowned her and forced her to leave the family home. They said that Maria-João (who was to give birth to the child of the enemy) represented an irreparable harm to the honour of the family and the entire village. Finally, her mother and her aunt (who was married to a wealthy man and lived in the capital) helped Maria-João escape from the country by paying a smuggler.

During the long and painful journey Maria-João was repeatedly harassed by both the smugglers and the other migrants. Finally, she managed to ask for asylum in a European country. She was placed in a specific shelter for vulnerable women. Maria-João only speaks her native language, which is not the official language of her country of origin and is not spoken by many. Consequently, the competent authority could only find a male interpreter for her asylum interview (the only interpreter available in that language in the entire country). Maria-João was unable to tell all the details of her story before a male interpreter from her own ethnic group: she did not tell about the rape in jail and how she had been thrown out by her family. Her asylum claim was rejected, arguing that there is no nexus between the Convention grounds and the harm she had suffered ("cooking, sewing and nursing are not political activities"). Given her extremely vulnerable situation, advanced pregnancy and weak health status, together with the terrible human rights record in the country of origin she was granted a humanitarian residence permit.

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Now let's imagine the same situation, but substituting Maria-João with João-Maria, her twin brother. Write a list of all the elements in the story which could have possibly or presumably happened differently, if the only difference is that the main character is a man. Try to be as detailed and creative as possible.



Let's see a **potential version** of João-Maria's story and how it compares to that of Maria-João:

MARIA-JOÃO	THE "GENDER IMPACT"	JOÃO-MARIA
Young, single person, living in a region struggling for independence and against oppression by the central government		
Not admitted as combatant ⇒ Cooks, repairs clothes and acts as nurse to support the guerrilla	Women and men can express their political opinion in different ways	Joins the guerrilla in the mountains, becomes a combatant
Crackdown on local guerrilla, combatants and supporters are arrested and detained		
Repeatedly beaten and raped while in detention, food and water deprivation	Forms of persecution may differ according to the victim's gender	Repeatedly beaten, tortured with burning cigarettes and sensory deprivation in detention
Released when it becomes clear that she cannot provide information and when her health status starts deteriorating dramatically	Women and men have access to a different level of information; women and men may have different physical capacities to resist hardship; men may have more possibility to influence their own fate, etc.	Can escape from jail after he hurts the guard on his foot with a knife and climbs over the fence
Returns home		
Pregnant because of rape ⇒ Disowned by the family for "harming its honour"	Women and men may have different access to the protective network of the community and may have different moral obligations	Received as a hero, supported by the family and the guerrilla, but wanted by the police
Has to escape from the country		
Repeatedly harassed by both smugglers and fellow migrants on the way to Europe	Women may be more vulnerable than men in a migratory situation; pregnant women may be extremely vulnerable	Faces difficult conditions and physical hardship on the way to Europe, but no harassment
Arrives in Europe, asks for asylum		
Placed in a special shelter for pregnant women	Single women asylum-seeker's (especially pregnant women) often face different reception conditions than single men	Placed in detention, released only after several weeks
Only speaks native language, did not participate in formal education ⇒ Interviewed in that language, with a male interpreter from the same ethnic group (the only interpreter available) ⇒ Neither discloses the rape in detention, nor the disowning by her family	Women and men may have access to different types and levels of education and language skills; the gender of the interpreter may strongly influence the asylum-seeker's capacity to disclose material information	Speaks the official language of the country of origin well (a widely-spoken Indo-European language), participated in formal education for 8 years ⇒ Interviewed in that language ⇒ Gives a full account of his story at the interview
Refugee status denied based on the lack of nexus ("cooking, sewing and nursing are not political activities"), but humanitarian protection is granted based on specific vulnerability and human rights concerns	Women-specific political, religious, etc. activities are often given less value when analysing the nexus with persecution than traditional male-specific ones <sup>1</sup>	Refugee status granted, based on a well-founded fear of being persecuted on political grounds

<sup>1</sup> Note that this particular difference is not related to credibility assessment – the first stage of asylum decision-making – but to the second one, i.e. the forward-looking legal analysis (see the two-stage model in Chapter III in Volume 1). Nevertheless, it has been included in this exercise to raise awareness about the different levels of gender-based factors that have an impact on the asylum procedure

This is just one of the many possible stories. Of course, in many guerrillas women also become combatants; men may also be raped in detention or on the road towards the country of asylum; a woman can also escape from a jail and women-specific political activities may also be considered properly in professional refugee status determination. However, practice shows that these examples are not uncommon and therefore this introductory exercise is intended to raise awareness about the variety of ways in which gender can influence an asylum-seeker's story, even far beyond credibility assessment in an asylum procedure.

## 2. Terminology

**Gender refers to the power relationships between women and men and girls and boys based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to men or women.**

Gender roles have developed in all societies so that certain behaviours are seen as the norm for men and women. Gender is an important issue in all societies. However, there are **variations in gender norms** across different countries and regions of the world.

### EXERCISE X.b

Thinking about your own society, can you enumerate typical tasks, responsibilities, expectations and characteristics that are associated with...

✓ MEN:

✓ WOMEN:

Here are some examples of gender roles in different countries and different cultural groups:

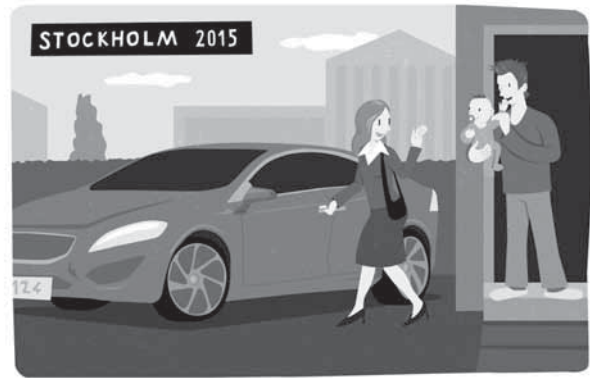
- ✓ Men go out to work and women work in the home;
- ✓ Men and women go out to work but women still do most of the domestic work in the home;
- ✓ Women go out to work in jobs that traditionally pay less than men's (e.g. childcare, cleaning);
- ✓ Boys/men are expected to bring in money and protect the women in their family;
- ✓ Boys/men are expected to be interested in sport;
- ✓ Girls/women are expected to be interested in fashion, etc.

### EXERCISE X.c

Looking at the list you have prepared for the previous exercise, can you find any examples that have changed in your society in recent years or decades? E.g. women were not allowed to wear trousers or smoke in public, while now these are completely accepted forms of behaviour. Prepare a list.

**Gender roles and gender-related expectations change over time in all societies.** Change can be fast and radical, but it can also be slow and gradual. It is important therefore not to look at gender as a permanent, unchangeable social construct.

# GENDER ROLES AND EXPECTATIONS CHANGE



In order to understand what **gender** means; it is important to distinguish it from **sex**. Sex refers to one's biological sex, which is innate, and can be male, female or intersex.<sup>2</sup> Sex differences are bodily, biological, hormonal, etc., while gender differences are socially and culturally constructed. Here are some examples to understand the difference:

Examples for sex differences	Examples for gender differences
<ul style="list-style-type: none"> <li>● Women can breast-feed, men cannot;</li> <li>● Women menstruate, men don't;</li> <li>● Girls reach pubescence earlier than boys on average;</li> <li>● Men have more facial and body hair than women, etc.</li> </ul>	<ul style="list-style-type: none"> <li>● Women are socially expected to care for their children more than men;</li> <li>● Women can wear a skirt, men cannot;</li> <li>● Women have to wear a headscarf, men don't;</li> <li>● Women can cry in public, men cannot, etc.</li> </ul>

## QUESTIONS FOR REFLECTION...

It is not easy to translate the concept of “gender” into all different languages. Most European languages do have two or three genders, therefore the distinction between sex and gender is linguistically not problematic. In some (especially non-Indo-European) languages the concept of gender does not exist, therefore some of these languages do not have a word for gender at all. This is the case, for instance, in the Hungarian language, where sex is translated as “biological sex” and gender as “social sex”. How do you say gender in your own language? Is it commonly used as a concept?

<sup>2</sup> On intersexuality see Chapter XI.1

Another key concept to define is **sexual and gender-based violence**. The UNHCR defines gender-based violence as

*[...] **violence that is directed against a person on the basis of gender or sex.** It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. While women, men, boys and girls can be victims of gender-based violence, women and girls are the main victims. [Gender-based violence] shall be understood to encompass, but not be limited to the following:*

- a) Physical, sexual and psychological violence occurring **in the family**, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.*
- b) Physical, sexual and psychological violence occurring **within the general community**, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.*
- c) Physical, sexual and psychological violence **perpetrated or condoned by the State and institutions**, wherever it occurs.<sup>3</sup>*

The UN General Recommendation No. 19 on violence against women (that served as basis for the UNHCR definition as well) emphasises that gender-based violence may constitute a violation of women's human rights, such as the right to life, the right to equal protection under the law, the right to equality in the family, or the right to the highest attainable standard of physical and mental health.

Shelah S. Bloom defined gender-based violence as

*[...] the general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society".<sup>4</sup>*

It is important to understand **that sexual and gender-based violence against men does exist**, too. For instance, men can become targets of physical or verbal attacks for transgressing predominant concepts of masculinity; for example, because they have sex with men or because they refuse to fight or perform military service, or because the violence is a means to undermine their gender role e.g. as bread-winner and guardian of the family. Men can also become victims of violence in the family by partners or children.

<sup>3</sup> UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons – Guidelines for Prevention and Response*, May 2003, p. 11 – extended definition used by the UNHCR and its implementing partners, based on Articles 1 and 2 of the UN General Assembly Declaration on the Elimination of Violence against Women (1993) and Recommendation 19, paragraph 6 of the 11<sup>th</sup> Session of the CEDAW Committee

<sup>4</sup> Shelah S. Bloom, *Violence against Women and Girls – A Compendium of Monitoring and Evaluation Indicators*, USAID, October 2008



Gender refers to the power relationships between women and men and girls and boys, as well as the relations between women and those between men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to men or women. Gender is not the same as sex, which is an innate, biological characteristic. Sexual or gender-based violence can affect any person regardless of her or his gender. Because of power inequalities in society, sexual and gender-based violence is more likely to affect women and girls, as well as gay or bisexual men, trans and intersex persons.

### 3. Gender and asylum procedures

It is noteworthy that the list of grounds for persecution in the refugee definition does not include gender. However, the 1951 Refugee Convention is regarded as a living instrument, therefore the refugee definition should be interpreted in light of the developments in international human rights law. **Gender-based claims can fall within any of the Refugee Convention grounds.** For example, gender, sexual orientation, etc., as innate characteristics, can determine a particular social group. Opposing a social order where women are considered inferior to men or have to undergo genital mutilation can easily constitute a political or religious ground. Women can become victims of rape as a “method” of organised ethnic cleansing, etc.

Also, in relation to the assessment of facts and circumstances detailed in Article 4 of the EU Qualification Directive, decision-makers are expected to take into account

*the individual position and personal circumstances of the applicant, including factors such as background, **gender** and age.*

The 2011 Istanbul Convention also stipulates that

1. *Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.*
2. *Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.*
3. *Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and **gender-***



*sensitive asylum procedures, including refugee status determination and application for international protection.*<sup>5</sup>

Therefore, there is a clear **international obligation to interpret the Refugee Convention and conduct asylum procedures in a gender-sensitive manner**. Think about Maria-João's example: if the refugee definition had been properly applied, the decision-maker should have understood that in Maria-João's society women usually express their political opinion by performing *typically female* activities (cooking, sewing, nursing, etc.) in support of *male* political activists. As this was the only way in which Maria-João could express her political opinion, it would have been accepted as such if the gender aspect had been properly considered.

In this context it must also be emphasised that all Member States of the European Union are obliged to follow the Charter of Fundamental Rights. This requires **equality between men and women**, equality before the law and the prohibition of discrimination on the basis of sex.

#### **4. Gender and credibility – why does it matter?**

A key reason for refusal of gender-based asylum claims in Europe is often credibility – decision-makers do not believe applicants. A comparative analysis of gender-related claims in nine countries in Europe found that the assessment of credibility is often at the core of asylum refusals in all the countries studied.<sup>6</sup> Compared to men, **women often face additional hurdles** in showing that their asylum claim is credible.

A determinant factor affecting credibility in gender-related claims is the need to rely on **personal testimony** because of a **lack of documentary evidence**. Women are more likely than men to have claims based on persecution suffered in the **private sphere**. Thus it may be more difficult for women to obtain documentary evidence due to the nature of the harm they have suffered, the agent of persecution and their activities and place in society. There are particular difficulties in providing evidence of certain types of harm such as domestic violence or forced marriage. In cases of imputed political opinion, some women may not have the information requested by the decision-maker to evidence their claim. It is also more difficult to access country information on the status and treatment of women.

For men, women, girls and boys, the experience of gender-based persecution may cause **shame, stigma and denial**. These may affect memory and disclosure, and therefore influence the applicant's ability to provide a consistent and coherent narrative about what has happened to them. Having to rely on personal oral testimony therefore results in gender-related challenges in credibility assessment.

In summary this means that **credibility assessment is particularly challenging in asylum cases based on gender-related persecution**, as the evidentiary difficulties and limitations presented in Chapter I may often be even stronger than in other cases. Also potential memory-, trauma-, shame- or culture-related distortions may multiply in the credibility assessment. This requires **particular caution and sensitivity**, and often specific preparedness.

But gender should not only be considered in cases of gender-based persecution: gender-related distortions, communication gaps, etc. in the credibility assessment can be present at all asylum cases. **Gender has a potential impact on the application of both internal and external credibility indicators in all cases**. The rest of this chapter will guide you through these

<sup>5</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011, Article 60

<sup>6</sup> Hana Cheikh Ali, Élodie Soulard and Christel Querton, *Gender-related Asylum Claims in Europe – A Comparative Analysis of Law Policies and Practices Focusing on Women in Nine EU Member States*, May 2012

potential distortions and other impacts and will provide you with guidance on how to overcome such difficulties and what factors you need to pay attention to.



*Gender-based claims can fall within any of the Refugee Convention grounds.*

*Asylum decision-makers must take gender into consideration when assessing the facts and circumstances of a case under EU law. Therefore, the Refugee Convention should be interpreted and the asylum procedure should be conducted in a gender-sensitive manner. This means taking into consideration gender roles and expectations and gender power relations in the country of origin, among other factors.*

*Credibility assessment is particularly challenging in asylum cases based on gender-related persecution, as both evidentiary difficulties and potential distortion factors may often be more present than in other cases. Beyond these specific cases, gender has a potential impact on the application of both internal and external credibility indicators in all cases and as such should always be considered.*

*The equality of men and women shall be respected in the asylum procedure.*

## **X.2 Credibility indicators and gender – Internal consistency and sufficiency of details**

A variety of factors relating to gender may affect the wealth of details and the internal consistency of an asylum-seeker's statement including memory, communication, sexual or gender-based violence and being part of a family.

### **1. Gender affecting memory**

Research has found that **gender roles and social expectations may influence our interests and what we focus on and therefore has an impact on how we recall past events**. 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>7</sup>

Remember that attention and specific interest in certain issues (and lack of interest in others) plays a key role in what information will be encoded in the memory and what elements can be recalled later.<sup>8</sup>

### EXERCISE X.d

Could you give a list of factors (social expectations, traditions, etc.) that may influence the different types of information or experiences that men and women may be able to recall? Prepare a list.

Are there such differences in your own society?

The actual variations between how men and women remember certain events **differ from cultural context to cultural context, as well as from person to person**, and, as usual, there are no generally valid rules. The following are some interesting practical examples that should not be used in a stereotypical manner:

- ✓ Having completed **formal education** often helps us focus our attention on and remember numbers, dates, etc. as well as usually enhancing capacities to present complex information in a coherent manner. Women in many societies have less access to formal education than men (see earlier);
- ✓ In all societies of the world there are **stereotypical expectations as to what details women and men should be “interested in”** (with of course great variation as to the volume of these differences). For example, men may be generally expected to remember the brand and the type of a car, while a woman may be more expected to remember its colour. In certain cultural contexts, women are expected not to be interested in certain topics, e.g. those related to sexuality, politics or science whilst men don't pay attention to domestic matters. These expectations, which are key elements of gender roles assigned by society, often have an impact of what details are perceived, encoded and recalled.



<sup>7</sup> Elizabeth F. Loftus, Mahzarin R. Banaji, Jonathan W. Schooler, Rachael A. Foster, “Who Remembers What?: Gender Differences in Memory”, Michigan Quarterly Review, vol. 26, no. 1, 1987, p. 83.

<sup>8</sup> See Chapter V in Volume 1

As we have seen in Chapter VI, the trauma and shame persecution causes can affect memory, and there are some important gender aspects to this as well. Psychological symptoms experienced during asylum interviews such as dissociative experiences, flashbacks and avoidance behaviours (for example avoiding thoughts or feelings associated with the trauma and not being able to remember details) have an impact on asylum seekers' ability to remember specific details associated with traumatic events. In Chapter VI, we have seen some of the main factors research has identified as influencing whether or not trauma causes amnesia.<sup>9</sup> For instance, victims who cannot share their experiences with family and friends, who cannot count on the support of society due to social taboos are more likely to “dissociate” and suppress memories. Also, if the traumatic experience is related to sexuality (rape, sexual abuse, etc.), dissociation and amnesia are more common than in other cases. Women asylum-seekers face these circumstances more often than men, so this should be considered when applying internal credibility indicators.

## 2. Gender affecting communication

### EXERCISE X.e

Do you think there is a difference between how men and women are expected to talk or tell a story in your own society? Or are there certain styles in verbal communication which are more accepted for women than for men or vice versa? If yes, please prepare a list of relevant factors.

Do you think the same expectations and differences apply in other societies as well? Can you think of any different types of differences?

In most societies there are certain **gender-specific expectations as to how persons should talk or tell a story**, even if the difference is not necessarily always significant. For example, in many European societies it is somewhat socially more accepted or considered less strange if women talk a lot, provide a lot of details when telling a story or disclose a number of emotional elements in the story, rather than when men do so. On the other hand, it may be more acceptable for men to use vulgar terms or include sexual references in a story than for women. In other societies (with much larger power difference between genders), men may be expected to always present their opinion in detail, while women and girls may be expected to talk briefly, only when they are asked and not to expose too much of their own thoughts or opinions. There may be further variations as to these potential factors depending on whether women talk to women, men talk to men, or there is a mixed group of communicators.

There is some research suggesting that **gender may affect the detail of a narrative account**.



<sup>9</sup> See Section 2 under Chapter VI.2



In some studies adolescent girls have been found to provide longer and emotionally richer narratives than boys do, with more detail and more interpretation of their own and others' emotions and motives.<sup>10</sup> But other studies have not necessarily found such gender differences. It is important to underline, though, that these studies have all been conducted among North-American/Western-European people, and in these societies the “distance” between gender roles and expectations are now much smaller than in many other societies.

Perceived failure to comply with gender expectations can result in **stigma which leads to feelings of shame**. Stigma and shame then make it impossible to disclose information or certain details that are associated with these feelings and experiences. For example, Maria-João may feel extremely uncomfortable talking about the ill-treatment she suffered in detention or her pregnancy, which was the reason for being disowned by her family (and therefore shame and stigmatisation). In these cases the applicant’s personal testimony may well have gaps and inconsistencies rather than being a complete coherent chronological narrative.

For example, a female applicant may (due to the gender-related aspects of her individual and contextual circumstances) . . .	For example, a male applicant may (due to the gender-related aspects of his personal and individual circumstances) . . .
<ul style="list-style-type: none"> <li>● lack experience and confidence in communicating with figures of authority;</li> <li>● not be used 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;</li> <li>● be used to being deferential or behave in a “respectful” way in her country of origin or place of habitual residence;</li> <li>● feel uncomfortable being interviewed by a man.</li> </ul>	<ul style="list-style-type: none"> <li>● want to seem overconfident (especially if interviewed by a woman);</li> <li>● answer questions he does not understand so as not to lose face;</li> <li>● have lost self-esteem because of the situation he finds himself in which may make him more vulnerable to suggestibility.</li> </ul>

### EXERCISE X.f

Can you think of other similar factors?

How do all these factors impact on the oral evidence provided by the applicant?  
Write a list with explanations.

In addition there may be **issues of trust that are related to gender**. For example, male applicants not trusting female decision-makers because of patriarchal roles in society or women not trusting men because of their experience of gender-based violence may be reluctant to provide a full account or even just to talk about distressing experiences. This is why EU law stipulates that whenever possible, **the interviewer and the interpreter should be of the same sex as the applicant**, if the applicant so requests.<sup>11</sup> The UNHCR Gender Guidelines further emphasise the importance of this principle:

<sup>10</sup> Azriel Gryzman, Judith A. Hudson, ‘Abstracting and extracting: Causal coherence and the development of the life story’, in: *Memory*, 18:6, 2010, pp. 565–580

<sup>11</sup> “unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner” – 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), Article 15 (3) (b)-(c)



*Women asylum-seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. It should be explained to them that they may have a valid claim in their own right. [...] Claimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves, and they should be provided automatically for women claimants.<sup>12</sup>*

### 3. Specific challenges related to sexual or gender-based violence

#### QUESTIONS FOR REFLECTION...

How long does it take for a victim of domestic violence to leave the aggressor and seek help? How long does it take for someone who was raped to be able to start talking about what happened and to seek help? How long does it take for an abused child to be able to talk about what happened to her/him and report to the police? Silence endures for months, years, decades, and sometimes even for a lifetime. Do you know about any cases in your own country where such treatment was revealed only after several years? Why was it kept hidden for so long?

In the criminal justice system in some countries in Europe, female police officers are automatically allocated to respond to reports of rape or domestic violence. In addition, it is recognised that someone who has been raped or experienced domestic violence may report some time after the event. This late disclosure is not held against victims as it is understood that there are strong psychological reasons for this delay. Is there any particular reason why we should not apply the same principles in the asylum context? Is there any reason why we could realistically expect a rape victim to tell all details in a coherent manner about the violence suffered right at the first interview, to a perfectly unknown officer and with the help of a perfectly unknown interpreter?

Sexual or gender-based violence may **affect the quality of oral evidence** provided by an asylum applicant. The barriers to disclosing sexual violence include **shame, concerns about emotional safety and intentional avoidance**.

Many of the women who claim asylum have experienced sexual or gender-based violence (rape, domestic violence, sexual exploitation, etc.) before they reach the country where they claim asylum. Because of the sense of shame involved, women generally find it easier to disclose such experiences to other women.

**Male asylum applicants may also have experienced sexual violence and/or rape.** Research shows that they rarely disclose such harm unless the damage is so severe that they require clinical treatment. Rape of men in prison is very common in many countries.

Gender-based harm such as rape or domestic violence promotes a range of feelings which can affect disclosure of important evidence during the asylum process. **Stigma and shame, fear of and lack of trust in authorities, fear of rejection or ostracism, and fear of serious harm as a**

<sup>12</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 Refugees*, 2002 – hereinafter UNHCR Gender Guidelines, Paragraph 36 (i) and (iii)

**reprisal** can make it hard to disclose what has happened to the applicant. Indeed people experiencing shame may engage in strategies to avoid this feeling, such as non-disclosure of sensitive personal information. Beyond shame and stigma, **silence may also mean a “survival strategy”**. Many migrant victims are afraid of being ostracised, repudiated, rejected or even killed (honour killing) by their own family or community living in the host country, if the fact of sexual or gender-based violence becomes known. Therefore they consciously decide not to disclose it, even if it could “help them” in certain procedures (such as the asylum procedure). This problem can be particularly frequent, if the interpreter is from the same country of origin or the same ethnic/cultural background as the applicant (regardless of how professional she/he is or what her/his gender is).

The issue of trust is not helped if **the speed of the asylum process** does not allow for trust to be built with interviewers. Applicants may not mention everything that happened to them at the first opportunity and only disclose the gender-based harm once they feel some trust in the asylum decision-maker or in the system, or even wait for many years before they do so. It can happen that they will never feel comfortable disclosing what happened to them. Although **late disclosure** can be seen as going against an applicant’s credibility in various contexts, this indicator **should not be used** in case of sexual and gender-based violence, where late disclosure is **the norm rather than the exception**. The EU Court of Justice also confirmed (in a case related to sexual orientation, but as a general principle) that

*[...] the obligation laid down by Article 4(1) of [the Recast Qualification Directive] to submit all elements needed to substantiate the application for international protection “as soon as possible” is **tempered by the requirement imposed on the competent authorities, under [the same and the Recast Asylum Procedures Directive] to conduct the interview taking account of the personal or general circumstances surrounding the application, in particular, the vulnerability of the applicant, and to carry out an individual assessment of the application, taking account of the individual position and personal circumstances of each applicant.***<sup>13</sup>

The level of detail should be used extremely carefully as a credibility indicator in cases of victims of sexual and gender-based violence (as in basically all cases of traumatic experiences<sup>14</sup>). The UNHCR Gender Guidelines also emphasise that

*Particularly for victims of sexual violence or other forms of trauma, second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information. In this regard, interviewers should be responsive to the trauma and emotion of claimants and should stop an interview where the claimant is becoming emotionally distressed. [...]*

*It is unnecessary to establish the precise details of the act of rape or sexual assault itself, but events leading up to, and after, the act, the surrounding circumstances and details as well as the motivation of the perpetrator may be required. In some circumstances it should be noted that a woman may not be aware of the reasons for her abuse.*<sup>15</sup>

#### **4. The presence of the family**

Although many asylum-seekers arrive alone, others come with family members. In some European countries the family applies for asylum together, generally with the male as the principal applicant and the woman and children as dependents. In others, all the adults are interviewed. Yet in some cases the man may not be able to speak freely in front of his family. In

<sup>13</sup> Court of Justice of the European Union, *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C148/13 to C150/13, 2 December 2014, Para. 70, emphases added

<sup>14</sup> See sub-section VI.4 in Volume 1

<sup>15</sup> UNHCR Gender Guidelines, Paragraph 36 (viii) and (xi)

others, the woman may have been persecuted as well and if she is not interviewed fully, her claim may be overlooked. This is especially true if her husband does not talk about her experience of persecution, either because he does not know about it or due to feelings of shame, or because of the gender expectations he perceives are placed on him as the head of household and therefore the one that should represent the family story. In some cases a woman's asylum claim may be stronger than that of her male relative. **Fear of revealing secrets, shame, stigma, fear of traumatising family members and fear of being "punished" or disowned by family members can all prevent asylum-seekers interviewed with their family members from providing a detailed and coherent account of their persecutory experiences.** This problem is strongly linked with external credibility as well (see later in this chapter).

If applicants with sole care of their children have their asylum interview with their **children present** this is likely to **inhibit disclosure of sexual violence and torture**. In addition, having children present at an asylum interview is **distracting** for the applicant and the interviewing officer. Additionally, being present at the interview may traumatise the children.

It is for all these reasons that EU law – in line with the UNHCR Gender Guidelines – stipulate that

*A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.*<sup>16</sup>

### EXERCISE X.g

1. Are asylum-seeking families interviewed together or separately in your country? If the principal applicant is the adult male family member, is the female partner interviewed? If yes, in what cases and for which purpose?
2. What is the policy in your country on childcare during asylum interviews? Are female asylum-seekers with children able to have their interview without their children present?

Check the relevant legal provisions and related policies.

<sup>16</sup> 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), Article 15 (1)



*Gender roles and social expectations may influence what details we focus on (and thus what details we retain in our memory), and it can have an impact on how we tell a story, as well as the level of detail and the personal opinions we provide when telling a story.*

*Gender thus has an impact on how we recall past events and on how much detail an asylum-seeker is able to provide and how coherently she/he will be able to present her/his story at an asylum interview.*

*The gender of the interviewer and the interpreter (as compared to that of the applicant) often has an impact on the trust between the communicators, and therefore may limit or enhance the asylum-seeker's ability to present a detailed and coherent account.*

*Having partners or children present at interviews may prevent disclosure of sensitive evidence that is relevant to the asylum claim.*

*Especially in cases of sexual and gender-based violence, late disclosure is the norm rather than the exception and should not be treated as a sign of lack of credibility.*

## **X.3 Credibility indicators and gender – External consistency**

### **1. Inconsistencies between different persons' statements because of gender**

#### **EXERCISE X.h**

Zaid is a male asylum-seeker. At his asylum interviews he provided a detailed and relatively coherent account of his political activities in the country of origin (he was the deputy chair of the regional branch of an opposition movement, he also organised several demonstrations). He also explained that he was arrested and detained as a political prisoner for several weeks, during which he was repeatedly beaten up, deprived from food and water for several days and he was even tortured with water once.

Emalia is Zaid's wife; she fled the country of origin with her husband and children. She was interviewed separately from Zaid, primarily in order to test Zaid's credibility. During the interview she provided little detail about the reasons why the family had to flee. She confirmed that Zaid was active in politics, but used the party's name incorrectly and did not know about her husband's official position in the regional branch (deputy chair). She did not know anything about the political programme of the party in which her husband played a prominent role. She

confirmed that Zaid was detained by the police, but claimed that Zaid was not ill-treated while in detention.

These are significant discrepancies all related to material elements of the claim.

1. What may be the different reasons for these discrepancies? Write a list and collect as many plausible explanations as possible.
2. Can we therefore conclude a negative credibility finding? What do we need to know before getting to a conclusion? Write a list.

Women, men, girls and boys have different roles and responsibilities placed upon them in different societies. These gendered roles result in them having **access to different types of information**. There may be completely natural inconsistencies therefore between what women and men say in relation to an asylum claim. For example:

- ✓ In many societies **women may have less knowledge/information** than men for about life outside the family home. Male family members may not share information with their female relatives about their work or their political activity;
- ✓ **Social taboos** may prevent couples or close family members from talking about certain issues. Sexuality, health, money, etc. may all be considered as taboo between persons of different gender, even if they are closely related;
- ✓ Gender-related social expectations usually have an impact on the **topics men and women are interested in** (see earlier), which leads to paying attention to and encoding different pieces of information in the memory;
- ✓ Gender roles may also **limit the possibility for both men and women to spend time with a certain type of activity**. In a society where men are expected to “work hard” but they are not usually actively involved in caring for their children (and family life in general), they may have much more limited information on what happens at home during the day or they may know very little about the experiences of their children (unlike the wife/mother). Also, in a society where women are expected to give birth to and raise many children and take care of all household tasks without male support, a mother of four young children may not have any time or energy to deal with issues falling beyond her daily duties (e.g. politics, the work of her husband, etc.), even if she had a genuine interest in these issues;
- ✓ Even long-time spouses or closely related family members may **deliberately hide important information from each other**. This is especially common in case of shame or stigma related to traumatising experiences (for example sexual or gender-based violence). Spouses may also hide information from each other in order to protect the other from a dangerous knowledge, etc.

Therefore, when a female dependant is interviewed primarily to probe the credibility of facts asserted by a male relative, these factors should be borne in mind. This is equally relevant when the statements and other evidence of a female applicant are compared with the statements and evidence of a related male applicant.

If any inconsistencies that are material to the determination of the principal applicant’s claim arise during an interview with family members or dependants, the principal applicant should be given the **opportunity to clarify** these.<sup>17</sup>

<sup>17</sup> See the legal fundament of this obligation under Standard 10 in Chapter III (Volume 1)



Now let's go back to Zaid's and Emalia's case. The discrepancies identified in this case study can, but do not necessarily lead to a negative credibility finding. Before getting to a conclusion:

1. We need to learn more about Emalia's individual and contextual circumstances. What is her level of education? How many children she had to take care of at home? What was her role in the family? What are the social expectations towards young, married women with children in the given cultural context? Does she have any interest in politics in general? What is the relationship (intellectual relationship, power relationship, emotional relationship, etc.) between the two spouses? Etc.
2. We need to ask both Zaid and Emalia for an explanation about the discrepancies.

A number of factors then will help to assess whether the discrepancies should lead to a negative credibility finding or not. For example:

FACTORS THAT MAY SUPPORT A NEGATIVE CREDIBILITY FINDING	FACTORS THAT MAY SUPPORT A POSITIVE CREDIBILITY FINDING
<i>Emalia is an educated woman with a genuine interest in politics and public affairs</i>	<i>Emalia had little or no formal education, she has never had an opportunity to learn about politics and therefore has little or no interest in public affairs</i>
<i>Emalia's and Zaid's relationship is based on mutual trust and equality</i>	<i>There is a strong power difference between the spouses, Emalia is in a clearly inferior position</i>
<i>Many women are active in the country's political life, women are not excluded from education and public debates in the closer social circles/cultural context of the couple</i>	<i>Women's life is usually limited to the private sphere, their primary responsibility is to manage the household, and give birth to and raise several children</i>
<i>Zaid and Emalia cannot provide any explanation for the discrepancies</i>	<i>Zaid explains that he was ashamed to reveal to his wife that he was tortured and humiliated;</i>
	<i>Zaid explains that aware of how dangerous his political activity was he was deliberately hiding all related information from his wife (to save her from eventual reprisals);</i>
	<i>Zaid and/or Emalia explain that women have nothing to do with politics in their country;</i>
	<i>Emalia explains that she has never been interested nor understood politics and she was so busy with the household and taking care of four little children totally alone that she did not have any time or energy to deal with such issues, etc.</i>



*Very often, women and men have different access to information and thus may have very different interest in or knowledge on certain issues. There are several plausible explanations why a male and a female relative (for example a husband and wife) would present different information about a material issue of the asylum claim. Trauma, shame, stigma, social taboos, gender-related social expectations towards women and men, different access to education, free time or the public sphere can all explain why otherwise closely related persons do not present similar accounts.*

*Such discrepancies should therefore not lead automatically to a negative credibility finding. Rather, it is important to duly consider both parties' individual and contextual circumstances and offer them an opportunity to clarify the discrepancy before reaching a negative credibility conclusion on this indicator.*

## **2. Gender and the lack of documentary evidence**

### **EXERCISE X.i**

- A. You are male asylum-seeker. You were a member of an opposition party in your country of origin. You participated in several meetings and even gave a speech on some occasions. You are afraid that the government will arrest you and subject you to inhuman treatment in detention. What kind of documentary evidence could you have access to in order to support the credibility of your claim?
- B. You are a female asylum seeker. You were repeatedly beaten, harassed and raped by your husband (to whom you were married in an forced marriage). Nobody wanted to help you; when you once tried to seek help from the police, they just laughed at you and called your husband to take you home. Now that you left your husband, you are afraid of being killed by him or your family, to save the family's honour. What kind of documentary evidence could you have access to in order to support your credibility?
- C. You are a young girl seeking asylum in Europe. You escaped home because your family wanted you to undergo female genital mutilation. What kind of documentary evidence could you have access to in order to support your credibility?

Is there any difference between the different examples? How is this related to gender?

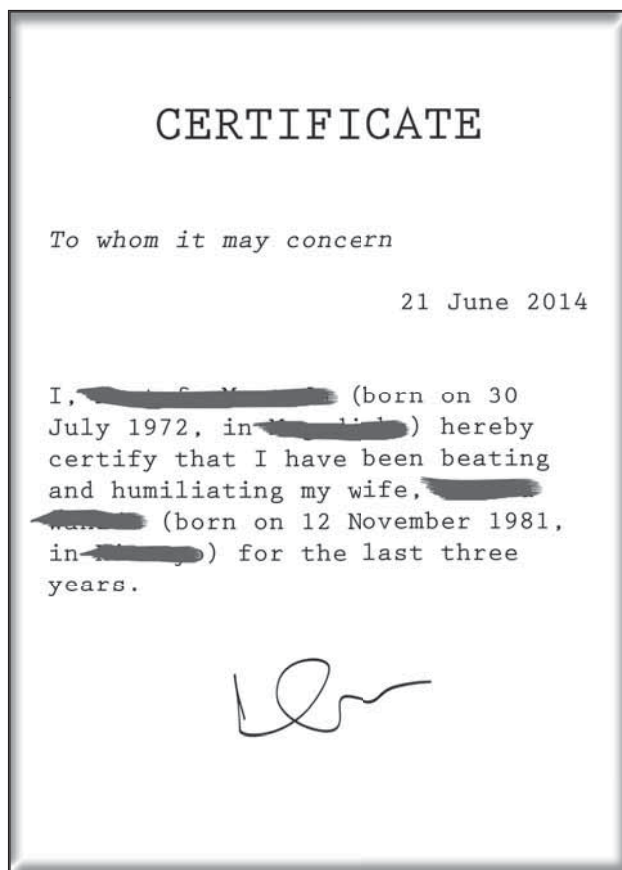
As we have seen from the above exercise, gender may have a significant impact on the extent to which an asylum-seeker has access to and is able to present documentary evidence in the process of credibility assessment. Let's see a few examples:

<p><b>LEGAL LIMITATIONS ON ACCESS TO DOCUMENTATION IN THE COUNTRY OF ORIGIN</b></p>	<p>An applicant might not have access to identity documents or other documentary evidence to support her/his application for gendered reasons, e.g. because she is a woman. For instance, the country of origin may not afford women full rights of citizenship or male relatives may exercise control over documentation relating to women. Married women may simply not have their own documents (but are added to their husband's papers), or women may need a male relative's consent or even active intervention in order to obtain specific documentation from state authorities.</p>
<p><b>DIFFERENT TYPES OF ACTIVITIES FOR DIFFERENT GENDERS</b></p>	<p>The political or religious activity of a woman can often be more difficult to substantiate than that of a man. Proof of membership in political parties or active support of a religious group, statements by party or church representatives and similar evidence may be difficult for a woman to produce, since her activities may have been of a different nature (see Maria-João's case). Women may be involved in low level activities such as cooking, or forming women's community groups or credit unions. These activities enable them to act together, but are much less documented in an official/formal format than other political or religious activities.</p>
<p><b>IMPUTED CONVENTION GROUNDS</b></p>	<p>Adults and children may be persecuted for imputed grounds. A person may be attributed a political opinion, religious, ethnic or cultural affiliation that they do not actually hold, for example if it is assumed that they have the same opinion as their father or husband. They may not know the reason for the persecution. Men in many countries are more likely to be actively involved in politics or official religious activities than women. In addition, women are often considered as belonging to their male relatives and subordinated to them in various aspects. This means that having a political opinion, religion, etc. imputed to you is more likely to happen to women. An imputed opinion or identity may not be an actual opinion or identity, or it may at least be much less explicit and important for the person concerned than what the agent of persecution believes. Obviously, it is extremely difficult (mostly impossible) to produce documentary evidence of an opinion or identity which is not the real one or which is not an explicitly assumed and lived one.</p>
<p><b>LANGUAGE AND LITERACY</b></p>	<p>Being able to read and write, as well as speaking the official language of one's country are often pre-conditions for obtaining official documents. In many societies women's illiteracy rate is much higher than men's. Also, in various multilingual (e.g. Sub-Saharan African) societies, women are less likely to fluently speak the language of state administration (often the heritage of a colonial past). This means that women may be more likely to face difficulties and to rely on external assistance when trying to obtain official papers than men.</p>

**Obtaining documentary evidence is particularly difficult in cases of gender-related persecution, such as sexual and gender-based violence or gender-specific harmful traditional practices.** The UNHCR gender guidelines state that

*No documentary proof as such is required in order for the authorities to recognise a refugee claim, however, information on practices in the country of origin may support a particular case. It is important to recognise that in relation to gender related claims, the usual types of evidence used in other refugee claims may not be as readily available.*

Gender-based persecution very often takes place in the **private sphere**, where no witnesses or official persons are present. In such cases, persecution is often committed by non-state actors, with state authorities being unable and/or unwilling to provide protection. While official papers (police papers, judgments, testimonies, etc.) may in some cases support allegations about political or religious persecution taking place (at least partly) in the public sphere, there is usually little to no documentary evidence about domestic violence, gender-specific harmful traditional practices or sexual exploitation happening “between four walls”.



Trying to obtain documentary evidence **may put some applicants at risk of prosecution** in countries where, for example, women and girls may be sentenced for adultery after being raped, or where adultery and/or homosexuality are criminalised. Even if a woman may be held free from these suspicions, she can be seen as morally guilty for an act that is deemed culturally unacceptable and shameful, and this may also have dangerous consequences for her (e.g. risk of honour killing, forced marriage, etc.).

**Shame and stigma** also often prevent gender-based violence from being officially reported and documented. Gender-based violence, harmful traditional practices and other related forms of persecution are closely related to the **core moral values and power relations of a society** (e.g. women's or children's subordinated position as compared to adult men, rituals of becoming an adult, concepts about sexual mores, etc.). These forms of persecution are very often related to the victim's **body and sexuality, and all**

**the social taboos attached to them.** Therefore, victims may feel particularly ashamed, afraid of being stigmatised and unable to disclose information about the persecution suffered before an official or even a medical person in the country of origin. Sometimes victims may even lack



## GENDER MAY AFFECT DOCUMENTARY EVIDENCE

the proper words to describe what happened to them.<sup>18</sup> Obtaining medical proof on gender- and sexuality-related facts and circumstances may even be difficult in the country of asylum. For example, as the UNHCR guidelines on female genital mutilation (FGM) also emphasise

*Recognition of refugee status should not be conditional on the presentation of a medical certificate to prove whether the girl has been subjected to FGM or not, particularly as certain medical examinations may have negative psycho-social implications for the child, if not undertaken in an appropriate manner.*

<sup>18</sup> See Chapter IX on language issues



We have seen that presenting documentary evidence is often particularly challenging (or even impossible) if the feared persecution is related to the gender of the applicant. Nevertheless, don't forget that applicants are not required to prove every aspect of their claim.<sup>19</sup> The verbal testimony adduced at the interview *is* evidence and for many gender-based claims it may be the only evidence they can provide.

### 3. Gender and country information

Asylum decision-makers are expected to use **country information** to corroborate material facts submitted by the applicant through their shared duty to substantiate an application. However, country information reports are often **lacking on information relevant to gender-related persecution**, for a number of reasons. For instance:

- ✓ **Statistical data or reports on the incidence of sexual violence may often not be available**, due to under-reporting of cases, or lack of prosecution.
- ✓ Such forms of persecution frequently occur in the private sphere, where no witnesses are present and in addition, there may often be strong family pressure not to report the incident to the authorities. Authorities may also not record such abuse.
- ✓ Local human rights organisations and media that operate in a particularly conservative or patriarchal social context (and who produce first-hand country information and report to secondary sources) **may not consider certain gender-based forms of persecution as relevant to their mandate**. Sources in such a context may provide useful and quality information on religious persecution, political oppression or anti-democratic measures, but may not be “interested” in domestic violence, homo- or transphobic violence<sup>20</sup> or strongly embedded harmful traditional practices, such as female genital mutilation.

This means that the gender aspect should also be considered when collecting or assessing country information. In cases of gender-based persecution, specific country information may be much less available than in other types of cases and it should not be automatically assumed that if a country report does not provide information of gender-specific practices, this means they do not occur. In such cases we may have to collect analogous or only indirectly related information in order to fill in the information gap (which could be less necessary or useful for example in “classic” cases of political or religious persecution). The UNHCR Gender Guidelines also emphasise that

*It is important to recognise that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available. Alternative forms of information might assist, such as the testimonies of other women similarly situated in written reports or oral testimony, of non-governmental or international organisations or other independent research.*<sup>21</sup>

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<sup>19</sup> See Module A in Volume 1 on evidentiary issues and legal standards related to credibility assessment

<sup>20</sup> See in detail in Chapter XI.4

<sup>21</sup> UNHCR Gender Guidelines, Paragraph 37





Gender often has an impact on access to documentary evidence. Women asylum-seekers may have more limited possibilities to present supporting documentary evidence for a number of reasons. For example, discriminatory legislation or legal practices in the country of origin preventing them from having or being able to request documentation on their own, or limited access because of the lack of language skills or literacy. Also, women-specific political or religious activities are often less “documented” than male-specific ones.

Obtaining documentary evidence is particularly difficult in cases of gender-based persecution, as this type of violence often takes place in the private sphere with no witnesses, and/or such an attempt may easily expose the applicant to a risk of persecution. Shame and stigma also often prevent victims from being able to obtain, for example, medical evidence of gender-based violence.

Because of these factors, gender-based forms of persecution are often less reported in country information than other forms of persecution. This should be considered when dealing with a lack of specific information.

## X.4 Gender and the decision-maker

### 1. Gender expectations and plausibility

Not only does the asylum seeker have a gender, gender-related assumptions and interiorised norms, so too do the interviewer, the decision-maker and the interpreter. Gender-related roles and expectations constitute a core part of our “onion of identity” (remember the model from Chapter VII?). **Our views of other people’s behaviour, morals and values may be affected by our gender and the gender roles in our society and what we perceive as normal within our society.** It is important instead to understand an individual’s beliefs and activities in terms of that individual’s own culture. Otherwise you can make assumptions that are particularly problematic in asylum claims involving gender issues.

Research has shown that decision-makers may rely too heavily on aspects of an applicant’s account not being plausible.<sup>22</sup> Sometimes this is based on gendered assumptions. However, what seems natural and reasonable within your own country or in Western society may be quite different in a different culture or society. It is dangerous to base decisions on implausibility,

<sup>22</sup> Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, p. 55; UNHCR, *Beyond Proof – Credibility Assessment in EU Asylum Systems*, May 2013, pp. 181–184

especially as they are often restricted to a **very narrow, subjective and culture-specific notion of plausibility**.<sup>23</sup>

Such ideas about plausibility may be **related to gender expectations and roles**. Men may be expected to defend themselves or their family, and a decision-maker may not believe that a man froze or fled when he and his family were in danger. Similarly, women are often portrayed as vulnerable, yet their accounts of their behaviour in the face of danger to themselves and their family may show quick-thinking and strength.

Many assumptions about asylum applicants may have a gender component. Here are some, but you can probably think of further examples.

ASSUMPTION	FACTORS THAT MAY PROVIDE A REASONABLE EXPLANATION
Domestic violence must always include physical violence	<p>According to Article 3 (b) of the Council of Europe Convention on preventing and combating Violence against Women and Domestic Violence</p> <p><i>[...] “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.</i></p>
Rape by prison guards is the random acts of individuals	<p>Refugees who are detained for political or any other reasons may be sexually abused or raped with acts that are condoned by the authorities whether explicitly or implicitly. Additionally, rape by the military may be part of a government or an opposition’s way of terrorising a community.</p>
If a woman has left her children behind, she cannot be a credible applicant, as “a real mother would/should never leave her children behind”	<p>A woman may be unable to bring her children with her or feel she has no choice but to leave without her children. This might happen because her life is at risk or because she believes her children will be endangered if she stays. In many cases, she will have left her children safe, for example with members of her family. Once a woman gets status, many will initiate family reunification to get their children back with them.</p> <p>Many asylum-seekers go through experiences that are unimaginable for persons born and living in safe European societies, therefore it is particularly problematic to judge such painful acts and choices, from a totally different life experience. In addition, this assumption represents a double standard, as men leaving their children behind is much less frequently questioned, and may therefore constitute discriminatory treatment.</p>
If a woman wears a headscarf and traditional clothes, she must be a woman who accepts submissive gender roles, she cannot be outspoken and refuse to do what her father/husband wishes	<p>Some women wear a headscarf for security rather than deep, personal conviction. The headscarf is also worn in European countries. Wearing a headscarf does not mean a woman is “backward”. Equally, wearing Western-style clothes considered as “modern” does not necessarily mean that a woman firmly believes in gender equality and is a strong and independent person. Gender-related assumptions based on clothes can be particularly misleading!</p>

<sup>23</sup> See also Chapter II.5 (Volume 1) on this issue

ASSUMPTION	FACTORS THAT MAY PROVIDE A REASONABLE EXPLANATION
<p>Women are usually more emotional than men, so a woman who suffered gender-related persecution should show strong emotions when recalling traumatic events (for example she seems more credible if she cries or displays high levels of distress)</p>	<p>As we have seen in Chapter VI in Volume 1, there is a wide variety of emotional reactions to recounting experiences of rape and torture, and one should not have any specific expectations as to the way in which an asylum applicant should manifest emotions when recounting traumatic experiences. Research has noted that decision-makers may frequently base their credibility findings on stereotypical, inaccurate, or inappropriate perceptions about the demeanour of women and girls.<sup>24</sup> Psychological research shows that decision-makers are more likely to believe those who express their emotions in ways they would expect, for example, a rape victim being visibly distressed.<sup>25</sup></p> <p>Additionally, it should be noted that there is a significant relationship between sexual violence and avoidance symptoms. A lack of displayed emotion does not necessarily mean that the woman is not distressed or deeply affected by what has happened. The UNHCR Gender Guidelines also emphasise that</p> <p><i>The type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility. Interviewers and decision-makers should understand that cultural differences and trauma play an important and complex role in determining behaviour.</i><sup>26</sup></p>

## 2. Good practice tips for gender-sensitive credibility assessment

- ✓ Ensure female applicants know that they have the right to pursue an asylum claim in their own right;
- ✓ Provide female interviewers and interpreters who are trained on gender-specific issues for female asylum applicants;
- ✓ Make arrangements so that applicants are not interviewed with their children present;
- ✓ Don't use demeanour or appearance as an indicator of whether an asylum applicant is telling the truth;
- ✓ Create a trusting atmosphere and ask open questions to facilitate disclosure;
- ✓ Don't ask precise details of rape or sexual violence;
- ✓ Be aware that an applicant may be reluctant to talk about traumatic events or not able to remember details;
- ✓ Don't make assumptions, especially as the applicant is likely to come from a different culture to yours with different gender norms, don't base your judgment on gender-based assumptions on behaviour, don't make assumptions based on clothes;
- ✓ Give due consideration to explanations for gender-related lack of documentary evidence;
- ✓ Don't assume that if there is no country information about a gender-based practice that this does not happen. Try to approach the problem from a different angle (using other indicators or analogous information);
- ✓ In line with the obligation in EU law, give the applicant a chance to explain any inconsistencies and lack of details and offer them the opportunity to explain the reason of their late disclosure;
- ✓ Do not use any delay in disclosure to reject the credibility of an applicant's account if the explanation is reasonable;

<sup>24</sup> UNHCR, *Women and Girls Fleeing Conflict*, p. 43

<sup>25</sup> G. Kaufmann, G. C. B. Drevland, E. Wessel, G. Overskeid, S. Magnussen, 'The Importance of Being Earnest: Displayed Emotions and Witness Credibility', in: *Applied Cognitive Psychology*, vol. 17, no. 1, 2003, pp. 21–34

<sup>26</sup> UNHCR Gender Guidelines, Paragraph 36 (i), emphasis added

- ✓ Consider all possible reasons for inconsistencies between statements made by a male and a female relative before reaching any credibility conclusion.

## HOW TO TAKE GENDER PROPERLY INTO ACCOUNT IN CREDIBILITY ASSESSMENTS?

### Knowledge

Understand and internalise the concept of gender, understand why it is relevant for asylum decision-making;

Read and understand the UNHCR Gender Guidelines;

Read and understand your own country's gender guidelines (if available) or related guidance, become familiar with good practices and gender guidelines from other countries;

Recognise that gender-based persecution often doesn't come with documentary evidence and take this into account;

Understand and take account of the reasons why it is difficult for an asylum applicant to disclose gender-based persecution;

Learn about the gender profile in your own country and asylum-seekers' country of origin, i.e. information that relates to men's or women's roles in society, their political or religious involvement, state-sponsored gender-related violence (e.g. in prisons), domestic violence, legislation against gender-related harm and whether it is enforced, the gender gap in power structures and salaries, etc.;

### Skills

Implement the various gender-related UNHCR and national guidelines where relevant;

Practice listening skills to get the most evidence during asylum interviews – listen for the gaps and probe gently and appropriately;

Practice interpreting an applicant's behaviour in the light of that individual's own culture and that country's social mores – with special emphasis on gender roles and expectations;

### Attitudes

Learn to approach gender-related cases with an open mind; it will help you gain better information about the application;

Be aware of your own gender stereotypes, assumptions, expectations and values and learn how to limit their impact on your communication and the decision-making process;

Don't assume that women and men will act in certain ways just because you would, or because you think that men or women in your country would;

Don't assume that women and men will act in certain ways just because men or women in the particular country of origin or the particular socio-cultural context "usually do" – remember that culture is individual and not everyone conforms to these norms.

# XI. ASYLUM CLAIMS BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY

## SETTING THE SCENE

Gay men, lesbians, bisexuals, trans and intersex persons are at risk of persecution in a large part of the world. Assessing credibility in asylum claims based on sexual orientation or gender identity involves **specific challenges** and requires **special preparedness and sensitivity**. As an organic continuation of the previous chapter on gender, this chapter will:

- ✓ Introduce the main **concepts and terms** related to sexual orientation and gender identity;
- ✓ Explain the main usual **conceptual mistakes, harmful and unscientific practices** that are relevant in this context; as well as it will
- ✓ Present the “**DSSH (Difference, Stigma, Shame and Harm) model**” and recommend methods for a humane and appropriate credibility assessment in these cases (including the use of credibility indicators).

Like the rest of this manual, this chapter also aims to cover a specifically defined topic, and therefore it will refrain from analysing otherwise highly relevant questions, such as the “discretion requirement”, the criminalisation of homosexuality as a form of persecution, etc.

The authors are also aware of the diversity of terminology with regard to this issue, as well as the frequent debates around the terms used. Considering the practical focus of this publication and the questionable usefulness of such terminology debates in the asylum context, the authors limited themselves to **using the terms most commonly accepted and referred to** globally.

The main focus of this chapter is **sexual orientation** (sometimes referred to as sexual identity or sexual and emotional orientation). In practice, claims based on sexual orientation, are considered much more challenging than those related to gender identity and intersexuality, *from the point of view of credibility assessment*. At the same time, gender identity and intersexuality will also be referred to whenever relevant, also for supporting the mainstreaming of these – often unduly overlooked – issues into the discourse around gender, sexual orientation and asylum.

This chapter is an organic continuation of the previous one on gender; the two should be read and considered in conjunction.



## XI.1 Context and terminology

### 1. Why a chapter on sexual orientation and gender identity?

**Sexual orientation and gender identity are relevant for asylum.** The EU Qualification Directive,<sup>1</sup> as well as UNHCR guidance<sup>2</sup> confirms that a **particular social group** (as understood in refugee law) can be based on sexual orientation and gender identity, and thus persons who have a well-founded fear of being persecuted on these grounds are entitled to international protection.

The 2011 landmark research report “Fleeing Homophobia” estimated (based on limited available national statistics and extrapolations) that every year approximately 10 000 asylum-seekers arrive in Europe in fear of persecution based on their sexual orientation or gender identity.<sup>3</sup> While exact numbers are impossible to produce at the time of writing, both training and research experience shows the **growing significance** of these cases in Europe. In addition, the spectacular advancement of gay and trans rights, as well as a fast growing social acceptance of gender diversity experienced recently in a number of European countries, shed stronger light on those who claim protection on these grounds. Even more so in light of the worsening, often state-sponsored persecution of gay men, lesbians and trans people in other parts of the world.

#### EXERCISE XI.a

Aron and Adam are both asylum-seekers in your country. They both come from the same region of a Central African country; they are both male, 21 years old and belong to the same ethnic group.

- ✓ Aron was a political activist in his country of origin. For several years, he was advocating for the independence of the region where he was born, where his ethnic group constitutes the majority of the population, unlike in the rest of the country. He organised meetings, marches, hunger strikes, and was detained by the police on several occasions. After he was severely ill-treated in detention he decided to escape his country, in fear of further reprisals.
- ✓ Adam is a gay man. He had his first intimate relationship with a friend from his home town. After a few months of sporadic encounters, Adam’s father one night caught them kissing behind their house. He beat Adam with whip and threatened him that if this happens again, he will kill him. The next week, Adam had to get engaged with the daughter of his father’s business partner. Once his injuries healed, Adam escaped from the forced marriage and further suffering and sought refuge abroad.

You are the asylum officer who has to interview both Aron and Adam and collect all the relevant information in both cases, on the basis of which a proper decision

<sup>1</sup> 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), Recital 30 and Article 10 (1) (d)

<sup>2</sup> UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, 23 October 2012 – hereinafter: UNHCR SOGI guidelines, Para. 46

<sup>3</sup> Sabine Jansen, Thomas Spijkerboer, *Fleeing Homophobia – Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, COC Nederland – Vrije Universiteit Amsterdam, September 2011, pp. 15–16

can be made. Based on the very limited information we have, are there major differences between the two cases? In particular:

- a. Would you prepare for the two interviews in a different way? Which interview would be more difficult/stressful for you? Why? What are those experiences, assumptions, stereotypes, etc. that make one case more complicated or stressful than the other?
- b. Would you use different questions?
- c. What kind of documentary evidence and/or country information would you expect to find and use in the two cases? Is there any difference?
- d. Would you expect more difficulties in disclosing information in one of the cases? If yes, why?

Before you continue, write your answers on a paper.

From the viewpoint of credibility assessment, asylum cases based on sexual orientation or gender identity are often considered **especially challenging** for a number of reasons. For example:

- ✓ In these cases, persecution is linked to some of the **most sensitive, most intimate areas of private life**: sexuality, emotions, affections, love, companionship, etc.
- ✓ Sexual orientation and gender identity are strongly connected with most fundamental moral, religious and political values of a society and, as such, are often surrounded by **taboos, stereotypes and prejudices**.
- ✓ Most asylum-seekers who claim protection because of their sexual orientation or gender identity have been through **traumatising experiences** and/or have developed vast **feelings of stigma, shame or even self-denial**.
- ✓ Persons at risk of persecution because of their religion, political opinion or ethnic/cultural identity may often find emotional, financial, etc. support within their family or within their own (religious, political, ethnic, etc.) community. Those at risk because they are gay or trans are very often **rejected, repudiated or even persecuted by their own family and community**, which multiplies their vulnerability to harm and trauma.
- ✓ As is common in gender-related forms of persecution, harm is frequently suffered in the **private sphere**, which may limit the availability of documentary evidence and country information, as compared to other cases.<sup>4</sup>

As a consequence:

1. For these asylum-seekers, it is usually **even more difficult to disclose material information in a detailed, explicit and coherent manner**, compared to other types of asylum cases. It is unsurprising, therefore, that such cases – even the most genuine protection claims – are **so often characterised by late disclosure, lack of detail and inconsistencies**.
2. But talking about and evaluating information on issues related to sexuality, love, emotions, shame, etc. is also a **major challenge for most interviewers and decision-makers**. European societies are also not free from taboos, stereotypes, prejudices or feelings of shame. In the most extreme cases, this may lead to erroneous, scientifically unfounded or even degrading credibility assessment methods.

Getting back to the introductory case study, here are some possible (or typical) differences you may experience with these two cases:

<sup>4</sup> See details in Chapter X on gender

ARON	ADAM
Aron <i>may be able to support his claim with documentary evidence, such as his party membership card, newspaper articles, etc.</i>	It is <i>likely</i> that Adam will not have any documentary evidence to prove that he is gay
Country information reports <i>may contain detailed information about the political movement Aron was involved with, as well as its treatment by the national authorities</i>	Country information reports <i>may contain information about homophobic laws and attitudes in the country, however they are much less likely to contain detailed information, such as individual stories, testimonies, etc.</i>
Aron is <i>likely to self-identify as a political activist, he may be able to explain in detail how and why he got involved in the political movement and what his main activities were</i>	Adam is <i>likely to face serious difficulties when asked about his sexual orientation, he is likely to feel shame, he may even lack the words to describe what he feels, or he may even deny being gay or feel uncomfortable about self-identifying as a gay man</i>
Aron <i>may have been emotionally and financially supported by his family and/or his political group when facing hardship and in his flight from persecution</i>	It is <i>very likely</i> that Adam had to escape without any support from his family and that he could not seek emotional support in this particularly difficult situation from those close to him
You can ask Aron <i>exact details about those activities that triggered persecution</i>	You <i>cannot</i> ask Adam <i>exact details about those activities that triggered persecution</i> <sup>5</sup>
You are <i>unlikely to feel specifically embarrassed or unprepared during the interview or when taking a decision in Aron's case</i>	You <i>may feel uncomfortable about the topics you need to discuss with Adam during the interview, you may feel more stressed than in other cases</i>

These examples are of course extremely simplified and only point at examples: in reality, all cases are different (for instance, gay asylum-seekers can also be political activists, who are ready to self-identify as gay and are able to provide a detailed and coherent account right at the first interview). However simplified this case is, it demonstrates some of the common difficulties that are associated with asylum cases based on sexual orientation and gender identity.

## 2. The world is a dangerous place for those “not straight enough”

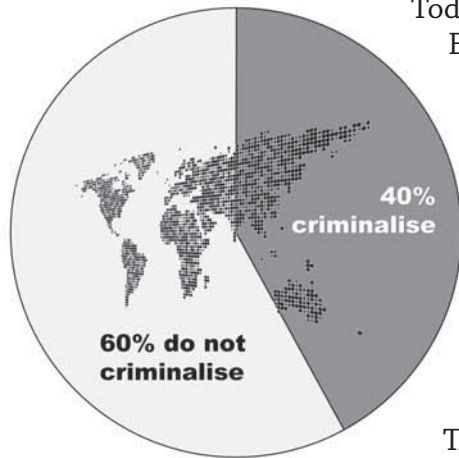
From a global perspective, gay men, lesbians, bisexuals, trans and intersex persons are undoubtedly **among the most persecuted populations** in the world. At the time of writing, consensual same-sex acts constitute a crime in as many as 40% (!) of the world's countries. Punishments envisaged by law go from fines to a life-long sentence and actual death penalty, the latter being currently applied in a minimum of 8 countries.<sup>6</sup>

**Massive criminalisation** is just the tip of the iceberg. **Persecution, severe discrimination, marginalisation, hate crimes, homo- and transphobic attitudes** are frequent also in many societies where same-sex conduct is not illegal, or even in some states where the legal framework is relatively progressive.<sup>7</sup>

<sup>5</sup> See details what can be asked instead in Chapter XI.3

<sup>6</sup> Brunei, Iran, Mauritania, Saudi Arabia, Sudan, Yemen, the northern Islamic states of Nigeria, parts of Somalia. The use of death penalty is unclear in Iraq, Pakistan and Qatar.

<sup>7</sup> For a global overview see for example the annual reports of the International Lesbian and Gay Federation (ILGA) – Lucas Paoli Itaborahy, Jingshu Zhu, *State-Sponsored Homophobia – A world survey of laws: Criminalisation, protection and recognition of same-sex love*, ILGA, May 2014



Today, for most gay, lesbian or transgender asylum-seekers, Europe may be – in most cases – a safe haven. However, **the persecution of gay men, lesbians and trans persons is not very distant history in Europe either.** Most European states fully decriminalised consensual same-sex conduct only in the second half of the 20<sup>th</sup> century, and in some countries, state-endorsed forms of persecution were common even only a few decades ago. The fascist regime in Italy, the dictatorship of Franco in Spain and most communist regimes in Eastern Europe outlawed homosexuality and harassed, intimidated, or even tortured and killed gay men, lesbians, bisexual and trans persons.

The most egregious persecution campaign was most probably conducted by Nazi Germany, where gay men and lesbians were systematically deported and exterminated in labour and concentration camps. Instead of the yellow Star of David (worn by Jews), gay men were forced to wear a pink triangle and lesbians were identified by a black triangle.

Before approaching any asylum case based on sexual orientation or gender identity it is important to understand the context, identifying the social, cultural and religious background which surrounds these personal stories. It is clearly **a very dangerous world to be gay, trans or intersex.**

### 3. Terminology

#### EXERCISE XI.b

Take a look at the definition of “gender” in Chapter X. Then write down your own definition of the following terms:

- ✓ Sexual orientation: ...
- ✓ Sexual behaviour: ...
- ✓ Gender identity: ...
- ✓ Gay: ...
- ✓ Lesbian: ...
- ✓ Bisexual: ...
- ✓ Trans(gender): ...
- ✓ Cross-dresser/transvestite: ...
- ✓ Intersex: ...

Keep this list close to you while you are working on this section and compare the definitions to your own ideas. Try to identify if there is any major difference between the two explanations.

Sexual orientation and gender identity as a human rights issue have remained in the shadows for so long that even finding the proper terminology can be challenging. The following definitions

are found in the **2007 Yogyakarta Principles**<sup>8</sup> arising from a consensus of experts in gay and lesbian rights who met in 2007 to discuss how these concepts can be understood.

<b>SEXUAL ORIENTATION</b>	...is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
<b>GENDER IDENTITY</b>	...is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of the bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech, and mannerisms.

Importantly, the Yogyakarta definition shows that **sexual orientation is not just sexual conduct or behaviour**. These terms relate to activities to find and attract partners for physical and emotional intimacy and actual sexual contact. Sexual orientation also involves emotions and affections. **Sexual behaviour is not always in line with sexual orientation**. For instance, a gay man or a lesbian may have engaged in heterosexual relations (e.g. prior to accepting her/his actual orientation/identity), and also, a heterosexual person may also have sexual contact with a person of the same sex. In addition, harassment of, or violence against, gay men and lesbians is often not solely because of their sexual behaviour, but also (or even more so) because of their *identity*, and/or non-conformity with prescribed gender roles or expected sexual morality. This is why alternatives to the term sexual orientation are becoming increasingly used. An example is "**sexual identity**",<sup>9</sup> as it emphasises how an individual identifies her/his own sexuality, both inside and outside the home, linked to what is inherent to the very identity of a person. Another alternative that has recently emerged in the Spanish language is "**sexual and emotional orientation**" or "**sexual and affective orientation**".<sup>10</sup>

Another important principle emphasised by the Yogyakarta Principles is that **a gender identity not corresponding with the sex assigned at birth does not require surgical intervention in order to be "genuine"**, the latter remaining entirely a free choice of the person concerned. There is an **important connection between sexual orientation and gender identity**. They both relate to gender as well as non-conforming sexual behaviour, appearances or identities. For example, a "heterosexual" trans person may still be perceived to be "homosexual" even after gender realignment treatment if her/his "new" sex/gender is not acknowledged. Another example is that a gay man perceived to be effeminate may experience violence where an otherwise "gender role conforming" gay man might not.

After understanding the general concepts of sexual orientation and gender identity now let's see further relevant expressions as defined by UNHCR guidance:<sup>11</sup>

<sup>8</sup> The Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007

<sup>9</sup> An emerging term used to identify within the context of "identity" rather than mere conduct

<sup>10</sup> *Orientación sexual y emocional; orientación sexual y afectivo*

<sup>11</sup> UNHCR SOGI guidelines, Para. 10 – footnotes and references omitted



LESBIAN	<p><u>A lesbian is a woman whose enduring physical, romantic and/or emotional attraction is to other women.</u> Lesbians often suffer multiple discrimination due to their gender, their often inferior social and/or economic status, coupled with their sexual orientation. Lesbians are commonly subjected to harm by non-State actors, including acts such as “corrective” rape, retaliatory violence by former partners or husbands, forced marriage, and crimes committed in the name of “honour” by family members. Some lesbian refugee applicants have not had any experiences of past persecution; for example, if they have had few or no lesbian relationships. Lesbians may have had heterosexual relationships, often, but not necessarily, because of social pressures to marry and bear children. They may only later in life enter into a lesbian relationship or identify as lesbian. As in all refugee claims, it is important to ensure that the assessment of her fear of persecution is future-looking and that decisions are not based on stereotypical notions of lesbians.</p>
GAY	<p><u>Gay is often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men,</u> although gay can also be used to describe both gay men and women (lesbians). Gay men numerically dominate sexual orientation and gender identity refugee claims, yet their claims should not be taken as a “template” for other cases on sexual orientation and/or gender identity. Gay men are often more visible than other LGBTI groups in public life in many societies and can become the focus of negative political campaigns. It is important, however, to avoid assumptions that all gay men are public about their sexuality or that all gay men are effeminate. Having defied masculine privilege by adopting roles and characteristics viewed as “feminine”, gay men may be viewed as “traitors”, whether they are effeminate or not. They could be at particular risk of abuse in prisons, the military and other traditionally male dominated environments and job sites. Some gay men may also have had heterosexual relationships because of societal pressures, including to marry and/or have children.</p>
BISEXUAL	<p><u>Bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women.</u> The term bisexuality tends to be interpreted and applied inconsistently, often with a too narrow understanding. Bisexuality does not have to involve attraction to both sexes at the same time, nor does it have to involve equal attraction to or number of relationships with both sexes. Bisexuality is a unique identity, which requires an examination in its own right. In some countries persecution may be directed expressly at gay or lesbian conduct, but nevertheless encompass acts of individuals who identify as bisexual. Bisexuals often describe their sexual orientation as “fluid” or “flexible”.</p>
TRANS(GENDER)	<p><u>Transgender describes people whose gender identity and/or gender expression differs from the biological sex they were assigned at birth.</u> Transgender is a gender identity, not a sexual orientation and a transgender individual may be heterosexual, gay, lesbian or bisexual. Transgender individuals dress or act in ways that are often different from what is generally expected by society on the basis of their sex assigned at birth. Also, they may not appear or act in these ways at all times. For example, individuals may choose to express their chosen gender only at certain times in environments where they feel safe. Not fitting within accepted binary perceptions of being male and female, they may be perceived as threatening social norms and values. This non-conformity exposes them to risk of harm. Transgender individuals are often highly marginalized and their claims may reveal experiences of severe physical, psychological and/or sexual violence. When their self-identification and physical appearance do not match the legal sex on official documentation and identity documents, transgender people are at particular risk. The transition to alter one’s birth sex is not a one-step process and may involve a range of personal, legal and medical adjustments. Not all transgender individuals choose medical treatment or other steps to help their outward appearance match their internal identity. It is therefore important for decision makers to avoid overemphasis on sex-reassignment surgery.</p>

<sup>12</sup> The term “trans” is increasingly used as compared to transgender. Trans people may identify as female-to-male (FTM), a trans man, or male-to-female (MTF), a trans woman. While there is significant variance in using gender identity-related terminology around the globe, trans is increasingly used as an umbrella term encompassing a number of different identities, including transsexuality, used previously by medical science and psychology (people whose gender identity is different from their assigned sex); cross-dressing (people who wear clothing that is traditionally or stereotypically worn by another gender in their culture and who are usually comfortable with their assigned sex and do not wish to change it) and drag queens/kings (people who cross dress in order to entertain in bars, theatres, etc. or in any other forms of artistic activity). For more information see for example: American Psychological Association, *Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression*, 2011 (updated in 2014)

The term intersex [...] refers to a condition where an individual is born with reproductive or sexual anatomy and/or chromosome patterns that do not seem to fit typical biological notions of being male or female. These conditions may be apparent at birth, may appear at puberty, or may be discovered only during a medical examination. Individuals with these conditions were previously referred to as “hermaphrodites”, however this term is considered outdated and should not be used unless the applicant uses it. An intersex person may identify as male or female, while their sexual orientation may be lesbian, gay, bisexual, or heterosexual. Intersex persons may be subjected to persecution in ways that relate to their atypical anatomy. They may face discrimination and abuse for having a physical disability or medical condition, or for non-conformity with expected bodily appearances of females and males. Some intersex children are not registered at birth by the authorities, which can result in a range of associated risks and denial of their human rights. In some countries, being intersex can be seen as something evil or part of witchcraft and can result in a whole family being targeted for abuse. Similar to transgender individuals, they may risk being harmed during the transition to their chosen gender because, for example, their identification papers do not indicate their chosen gender. People who self-identify as intersex may be viewed by others as transgender, as there may simply be no understanding of the intersex condition in a given culture.

**Certain asylum-seekers may be completely unaware of the above terms**, as they come from countries where only derogatory terms are used to describe those with different sexual or gender identities.<sup>13</sup> For example, in Jamaica, a gay man is referred to as a *battymen* and a lesbian as a *sodomite* (while the latter term refers to gay men in many other countries). In Iran, it is only those men who desire another man who are targeted, as they show desire (*lavat*), whilst men who engage in sex with men, as long as they are not “passive” (as to their role in the sexual intercourse) are not marginalised and persecuted, since they are merely engaging in sex where there is no access to a female sexual partner. It is important to be familiar with the derogatory terms used in various countries.

In other cases, asylum-seekers may know these terms but **use them with different meanings**. For example, some trans women from Cuba, may refer to themselves as *homosexual*, since gay, in their understanding, mean effeminate men.

Some asylum-seekers may refuse to be referred to as *gay* as they feel that this describes a political group and/or effeminate men. This is why in some contexts the term *men who have sex with men* (*MSM*) is given preference. Also, some lesbians see this term somewhat offensive and may prefer to be identified as *gay women*.

Don't forget: whilst persecution arises from the manner in which the potential persecutor views the asylum-seeker, due to their lack of conformity with a stereotype the persecutor holds on how men and women should behave in society, the asylum claim originates from **how the asylum-seeker views her/his own sexual orientation or gender identity**. Remember, the asylum-seeker **may only be starting a journey of self-discovery** with respect to these crucial elements of identity. They also may have experienced many years of having to live a double life, where they have had to use deception in order to survive, so they may be evasive when answering questions. It is therefore important to **remain flexible, empathetic and culturally sensitive** when applying these terms.

#### 4. Fundamental principles

After understanding what sexual orientation and gender identity is, it is important to emphasise what these concepts aren't, especially in light of the numerous stereotypes and misconceptions that prevail, even in European societies:

<sup>13</sup> It is important to emphasise that “derogatory” does not only mean that these terms are derogatory in comparison to the terminology considered as politically correct or neutral in Europe or elsewhere. They are derogatory as they are meant to be and are used in an offensive and stigmatising way. See more about stigma in the following sub-chapter.

BEING LESBIAN, GAY OR BISEXUAL IS ...	NOT A DISEASE	On 17 May 1990, the General Assembly of the World Health Organisation (WHO) removed homosexuality from their list of mental disorders. Today, there is general consensus in the medical profession in Europe (and many other regions) that being lesbian, gay or bisexual is neither a disease, nor a mental disorder; therefore it does not require cure or therapy. Homo- or bisexual orientation must never be confused with paedophilia, as this is not internationally recognised as a sexual orientation. Such confusions are incorrect and deeply offensive for lesbian, gay and bisexual people.
	NOT A CHOICE	While there are scientific debates about which (genetic, hormonal and psycho-social) factors may determine sexual orientation, it is largely agreed that it is not something one can choose or be required to change. According to scientific knowledge, sexual orientation is determined by factors a person cannot influence. One can choose whether to hide her/his sexual orientation or to live it openly, or one can decide whether to accept it or deny it. However, a gay person cannot decide to become straight, if they have no heterosexual desires, similar to a straight person who cannot simply decide to become gay.
	NOT A LIFESTYLE	Individuals experience and live their sexual and gender identity in many different ways, depending on their country of origin, gender, culture, social class, education, religion, family background and socialisation. There is no uniform way in which lesbian, gay and bisexual people recognise and act on their sexual or gender identity. Do not place the asylum-seeker in an evidential prison, in which they must conform to the stereotypes and assumptions on how a lesbian or a gay man “should” behave (dress, talk, think, etc.).
	CURRENT IDENTITY	Millions of lesbians and gay men in the world are forced to live their lives as straight people in order to avoid being identified and suffering the negative consequences such identification entails, which may include persecution. Millions of gay persons lived previously, or live currently in heterosexual relationships, are married and/or have children. Recognising, understanding and accepting one’s sexual orientation – if it differs from the majority and social expectations – is a long and painful process, which can remain uncompleted. The fact that this recognition and acceptance comes step-by-step, and in some instances, even at a later stage in life, is common and does not undermine the “genuineness” of an individual’s sexual orientation or gender identity.
	A HUMAN RIGHT	EU law prohibits any type of discrimination based on sexual orientation. <sup>14</sup> UNHCR guidance also emphasises that sexual orientation and/or gender identity are considered as innate and immutable characteristics or as characteristics so fundamental to human dignity that the person cannot change the characteristic, or should not be compelled to forsake them. <sup>15</sup> While full equality is still far away, a growing number of international and national legal instruments in different parts of the world stipulate that lesbian, gay and bisexual persons have the right to live a full life as lesbian, gay or bisexual persons and should not be treated unfavourably as compared to heterosexuals.

Very similar conclusions can be made about gender identity as well, with one difference. Identifying with a different gender different from one’s biological sex is still considered as a mental disorder by a significant part of psychologists and the medical profession (“gender identity disorder”). Many trans people and a growing number of experts support the declassification of gender identity disorder as a mental disorder, arguing that it pathologises gender diversity and reinforces a purely binary model of gender, thus contributing to stigmatisation. A major, but not yet conclusive, step in this direction, was when the American Psychiatric Association introduced the term **“gender dysphoria”** (instead of disorder) in its 2013 Diagnostic and Statistical Manual of Mental Disorders (DSM-5), and removed this category from the chapter of

<sup>14</sup> EU Charter of Fundamental Rights, Article 21 (1)

<sup>15</sup> UNHCR SOGI guidelines, Para. 47

sexual dysfunctions with the explicit intention of removing stigma and any connotation that the patient is “disordered”. While scientific debates about this question may continue, in the asylum context, **the pathologisation of a trans identity should be avoided by all means.**







Sexual orientation is each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual, straight) or the same gender (gay, lesbian) or more than one gender (bisexual). Gender identity is each person's deeply felt internal and individual experience of gender, which – in the case of trans people – does not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech, and mannerisms.

It is fundamental to keep in mind when dealing with asylum cases based on sexual orientation or gender identity that being lesbian, gay, bisexual or trans is a) not a disease, b) not a choice, c) not merely a lifestyle, d) that it refers to the person's current identity and it is e) intimately linked with the person's human rights and dignity.

## XI.2 How not to prove sexual orientation or gender identity?

### EXERCISE XI.c

Lizeta is an asylum-seeker who claims to be at risk of persecution in her country of origin for being lesbian. As a decision-maker, which of the following pieces of evidence would you a) admit as decisive evidence or indicator with regard to Lizeta's credibility with regard to her sexual orientation; b) admit as one of the relevant factors/indicators (but not a decisive or necessarily very important one); c) exclude from your assessment.<sup>16</sup>

- ✓ A marriage certificate that proves that Lizeta was married to a man in her country of origin;
- ✓ A psychiatric expert opinion that states that "Lizeta is homosexual";
- ✓ A psychological expert opinion that states that "Lizeta is heterosexual";
- ✓ A video of Lizeta and her girlfriend having sex;
- ✓ The fact that Lizeta could not name any of the well-known gay rights organisations operating in her country of origin;
- ✓ The fact that Lizeta could not name any of the well-known gay rights organisations operating in your country (the country of asylum);
- ✓ The fact that Lizeta does not know any gay or lesbian bar in the country of asylum;

<sup>16</sup> These are all proofs/facts deemed as material for credibility assessment in sexual orientation-based cases in European and North-American countries from recent years (examples based on the authors' experience)



- ✓ A report by a medical doctor that states that when subjected to different pornographic materials in the framework of an examination, Lizeta reacted with a similarly low level of sexual arousal to heterosexual and lesbian pornographic materials;
- ✓ The fact that Lizeta looks very feminine;
- ✓ The fact that Lizeta looks quite masculine;
- ✓ A psychological expert opinion that states that Lizeta strongly identifies with female identity and has a strong desire to give birth to a child;
- ✓ The fact that in a previous asylum claim, Lizeta did not refer to her sexual orientation as the reason for fearing persecution, she rather referred to her belonging to a religious minority;
- ✓ Lizeta's detailed account about her sexual habits with her girlfriend;
- ✓ Lizeta's inability to name any sexual practice common among lesbians.

(guidance comes later)

As stated above, credibility assessment is particularly challenging in cases where the fear of persecution is based on the applicant's sexual orientation or gender identity. Unfortunately, a number of highly problematic practices have been applied and reported from a wide range of jurisdictions around Europe and beyond, even in recent years. Before actually providing advice on how to conduct credibility assessment in these cases this sub-chapter aims to clarify which methods are not acceptable as they are

- ! unscientific; and/or
- ! intrusive and humiliating; and/or
- ! simply not useful in establishing material facts and circumstances.

### EXERCISE XI.d

Before you continue reading take a look at the five fundamental principles in the previous sub-chapter. Based on these important baseline principles, can you identify any credibility assessment methods that would not be acceptable? Write a list:

- ✓ Not a disease: ...
- ✓ Not a choice: ...
- ✓ Not a lifestyle: ...
- ✓ Current identity: ...
- ✓ A human right: ...

The landmark December 2014 **A, B and C judgment by the Court of Justice of the European Union**<sup>17</sup> and **UNHCR guidance** have both set clear boundaries with regard to how the credibility of an asylum-seeker's alleged sexual orientation shall *not* be assessed. The Court's point of departure

<sup>17</sup> A (C-148/13), B (C-149/13), C (C-150/13) v *Staatssecretaris van Veiligheid en Justitie*, Court of Justice of the European Union, 2 December 2014 – hereinafter: A, B and C judgment

was in this context that all assessment methods shall respect the person’s **human dignity and right to private life** as guaranteed by Article 1 and 7 of the EU Charter of Fundamental Rights. On this basis, the Court held that the following assessment methods are not acceptable:

!	NO ASSESSMENT BASED ON STEREOTYPES	<p>“As regards [...] assessments based on questioning as to the knowledge on the part of the applicant for asylum concerned of organisations for the protection of the rights of homosexuals and the details of those organisations, such questioning suggests [...] that the authorities base their assessments on stereotyped notions as to the behaviour of homosexuals and not on the basis of the specific situation of each applicant for asylum.”<sup>18</sup></p> <p>“[...] the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not [...] satisfy the requirements of [EU law] in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned.”<sup>19</sup></p>
	NO QUESTIONING ON SEXUAL PRACTICES	<p>“[...] questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the [EU Charter of Fundamental Rights] and, in particular, to the right to respect for private and family life”<sup>20</sup></p>
	NO USE OF EVIDENCE SHOWING SEXUAL ACTIVITIES	<p>“the production by [...] applicants of evidence such as films of their intimate acts, it must be pointed out that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by [the EU Charter of Fundamental Rights]”<sup>21</sup></p> <p>“Furthermore, the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence.”<sup>22</sup></p>
	NO “TESTS”	<p>“[...] the submission of the applicants to possible ‘tests’<sup>23</sup> in order to demonstrate their homosexuality [...] besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by [the EU Charter of Fundamental Rights]”<sup>24</sup></p>

<sup>18</sup> A, B and C judgment, Para. 60

<sup>19</sup> A, B and C judgment, Para. 62


<sup>20</sup> A, B and C judgment, Para. 64

<sup>21</sup> A, B and C judgment, Para. 65

<sup>22</sup> A, B and C judgment, Para. 66

<sup>23</sup> Note that in some rare cases, even European countries applied in the recent past deeply humiliating and scientifically questionable “pseudo-medical tests” to assess asylum-seekers’ credibility with regard to their sexual orientation, such as “phallometry” or “plethysmography”. See more about this issue in: Organization for Refuge, Asylum and Migration, *Testing Sexual Orientation: A Scientific and Legal Analysis of Plethysmography in Asylum and Refugee Status Proceedings*, February 2011

<sup>24</sup> A, B and C judgment, Para. 65



**NO REJECTION OF CREDIBILITY JUST BECAUSE OF LATE DISCLOSURE**

“[...] having regard to the sensitive nature of questions relating to a person’s personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset. [...]”

Moreover, it must be observed that the obligation laid down by Article 4 (1) of [the EU Recast Qualification Directive] to submit all elements needed to substantiate the application for international protection ‘as soon as possible’ is tempered by the requirement imposed on the competent authorities [by both the Recast Qualification Directive and the Recast Asylum Procedures Directive] to conduct the interview taking account of the personal or general circumstances surrounding the application, in particular, the vulnerability of the applicant, and to carry out an individual assessment of the application, taking account of the individual position and personal circumstances of each applicant. [...]

Thus, to hold that an applicant for asylum is not credible, merely because he did not reveal his sexual orientation on the first occasion that he was given to set out the grounds of persecution, would be to fail to have regard to the requirement referred to in the previous paragraph.”<sup>25</sup>

Lizeta’s case shows some of the typically problematic ways to assess credibility in sexual orientation-based cases:

EVIDENCE, FACT OR CIRCUMSTANCE	USABILITY / DECISIVENESS IN ESTABLISHING THE CREDIBILITY OF AN ALLEGED SEXUAL ORIENTATION
Marriage certificate	<ul style="list-style-type: none"> <li>■ We are assessing the <u>current sexual orientation</u> of the applicant. There are many reasons for which lesbians or gay men may get married, with a partner of the different sex, and hide their actual sexual orientation for years or decades (to avoid persecution, to live up to social or family expectations, to avoid stigma, etc.)</li> <li>■ The fact of a previous marriage may be considered <u>partly relevant</u> in credibility assessment, but should never lead to an automatic rejection, and should rather be used in order to fully discover the material elements of the applicant’s story (see later)</li> </ul>
Psychiatric or psychological expert opinion about sexual orientation	<ul style="list-style-type: none"> <li>■ Being gay, lesbian or bisexual is <u>not a mental disorder</u>; there is <u>no medical or psychological methodology</u> for establishing an individual’s sexual orientation</li> <li>■ Such examinations may be seriously <u>humiliating and degrading</u></li> <li>■ “Testing” sexual orientation in an asylum procedure is <u>prohibited</u> by the A, B and C judgment</li> </ul>
Visual recording of sexual activities with current partner	<ul style="list-style-type: none"> <li>■ Using sexually explicit evidence about an applicant’s intimate life is seriously <u>humiliating and degrading</u> and violates her/his <u>right to private life</u></li> <li>■ Requesting or admitting such sexually explicit evidence in an asylum procedure is <u>prohibited</u> by the A, B and C judgment</li> </ul>

<sup>25</sup> A, B and C judgment, Paras 69–71

Inability to name any well-known gay rights organisations in the country of origin or of asylum	<ul style="list-style-type: none"> <li>While the knowledge of or contact with LGBTI-rights organisations, or the “gay scene” (cultural life, entertainment, social groups, etc.) may contribute to credibility assessment, in most cases, the mere lack of such knowledge is not a relevant indicator, as the individual may not have access to these resources due to economic or social reasons. Most lesbians and gay men never get into contact with human rights, social or cultural groups, many of them do not go to gay bars and remain “in the closet” (hide their sexual orientation) even in the country of asylum. Requiring lesbian, bisexual or gay asylum-seekers to know about the certain organisations, or the “gay scene”, in order to be credible is based on <u>stereotypical assumptions</u></li> <li>Assessing the credibility of an asylum-seeker’s statement regarding her/his sexual orientation on the basis of stereotypical assumptions alone, is <u>prohibited</u> by the A, B and C judgment</li> </ul>
Lack of knowledge about the “gay scene”	
Medical report about the outcome of a plethysmography <sup>26</sup> test	<ul style="list-style-type: none"> <li>This method – besides its highly questionable evidentiary value – is deeply humiliating, and may even constitute <u>inhuman and degrading treatment</u></li> <li>“Testing” sexual orientation in an asylum procedure is <u>prohibited</u> by the A, B and C judgment</li> </ul>
Feminine or masculine look	<ul style="list-style-type: none"> <li>Assessing the credibility of an asylum-seeker’s statement regarding her/his sexual orientation on the basis of stereotypical assumptions about behaviour and look is highly <u>misleading</u> and <u>prohibited</u> by the A, B and C judgment</li> </ul>
Psychological expert opinion that confirms strong identification with female identity and desire to have children	<ul style="list-style-type: none"> <li>This illustrates <u>confusion</u> between sexual orientation and gender identity: most gay people identify with their gender, and many gay people, like others, want to have children. These facts are <u>completely irrelevant</u> when assessing the credibility of their alleged sexual orientation</li> <li>This assessment is based on irrelevant conclusions and <u>stereotypical assumptions</u> (“gay people cannot have children”) and as such is <u>prohibited</u> by the A, B and C judgment</li> </ul>
No reference in previous asylum claim to sexual orientation as the reason for fearing persecution	<ul style="list-style-type: none"> <li>This <u>may be a relevant circumstance</u> in the credibility assessment process, but since “late disclosure” is very common in this type of asylum cases and there are many good reasons for this phenomenon, the A, B and C judgment <u>prohibits</u> the rejection of credibility <u>only on this ground</u></li> </ul>
Detailed account about sexual habits with current partner	<ul style="list-style-type: none"> <li>Requesting or admitting such sexually explicit evidence in an asylum procedure is <u>prohibited</u> by the A, B and C judgment</li> <li>Also, <u>sexual conduct does not necessary reflect</u> an individual’s sexual orientation: a lesbian or a gay man may not yet have engaged in intimate same-sex activities, or may not have any sexual experience at all – therefore basing credibility assessment on such information can be seriously <u>misleading</u></li> </ul>
Inability to name any sexual practice common among lesbian women	

As you can see, most of these forms of evidence are inappropriate and prohibited under EU law (as outlined by the A, B and C judgment). Others may be relevant, but should be used as part of a complex analysis, not as a single piece of evidence used to determine credibility (see more in the following part of this chapter).

<sup>26</sup> See footnote 23



There are a number of erroneous, scientifically unfounded and/or humiliating methods that – following a recent judgment of the EU Court of Justice and UNHCR guidance – must not be applied to establish the credibility of sexual orientation or gender identity.

Assessment shall not be based a) only on stereotypes and stereotypical assumptions; b) on intrusive questioning (for example regarding sexual activities); c) on sexually explicit evidence (photos, videos, etc.); or d) on medical, psychiatric or psychological testing. Also, credibility must not be rejected on the grounds of late disclosure as a sole argument.

### XI.3 The DSSH model: a framework to understand asylum claims based on sexual orientation or gender identity

#### 1. The need for a model

#### EXERCISE XI.e

Read carefully these four short stories:

A) **Manuel** was born in a small town in a Latin-American country. He had a pleasant childhood, loved by his parents and two brothers. Like most boys in his town, he spent his afternoons playing football and helping at his parents' little shop. At the age of 16 he started going out with Ana, one of his classmates. At the age of 19, he started working as a car mechanic; this is where he met Juanjo, who was the son of the owner of the workshop. As they were of the same age and both liked cars, they became good friends and spent more and more time together. After a few months Manuel realised that he had “unusual” feelings towards Juanjo, something that goes beyond mere friendly sentiments. When Juanjo started going out with Luz (a girl from the neighbourhood), Manuel became very jealous, a feeling he could not even explain to himself. His feelings and anxiety grew so strong that he decided to break up with Ana as his thoughts were constantly centred on Juanjo and his “unusual feelings”. One weekend, Juanjo and Manuel went fishing to a nearby lake, where



Manuel could not hold back his feelings anymore and revealed them to his friend. Juanjo was very embarrassed and after that weekend he stopped seeing Manuel. A few weeks later Manuel found out that someone wrote “*maricón*” (faggot) on the wall of their house. Manuel felt horrible, but was afraid to talk about the issue to his family, not wanting to hurt them. He went to see Juanjo, they started to argue and finally Manuel punched him in his face shouting that “I am not a fag, stop spreading this lie!”. The next Saturday, on the way home from the local dance club a few unknown men attacked him and severely beat him up, telling him that “fags have nothing to do here” and “leave or we’ll kill you”. He had to be taken to hospital. After a few days he realised that one of the guys who attacked him was a well-known drug dealer in town. He could still not give any explanation to his family, nor could he talk about his confusing feelings to anyone. He finally decided to leave the town and his family.

B) **Yamina** was born in an East African country. At the age of 19 she married Harun, a wealthy businessman from the capital. The marriage was arranged by Yamina’s parents, but they also asked Yamina’s opinion. As Harun seemed to be a nice and handsome man and could also offer Yamina an easier life in the capital, Yamina agreed to marry him. She was not “in love” with her husband, but they got along well. Yamina never really enjoyed sex with her husband, but in their culture women are usually not expected to have such desires, so she did not care too much. In the forthcoming years Yamina gave birth to three beautiful babies who gave the couple lots of happiness. At the age of 28, Yamina started seeing Zaynab, her best friend from school back in her native town. Zaynab often came to the capital for her family business and to visit relatives. Whenever she came, they met, they went to cinema or to the market, they cooked together and had endless chats. Harun was first happy that Yamina found a good friend to spend time with, but after a few years he started to dislike Zaynab, often warning Yamina that this friendship is becoming “too close” and that Zaynab had bad influence on her. Once, Harun accidentally found the two women having bath together at their house. He became furious and prohibited Yamina to see Zaynab again. Facing this situation, Yamina realised that her feelings to Zaynab are much stronger than her commitment to her husband. The two women continued meeting in secret and their relationship became sexually intimate, going beyond the usual boundaries of a close friendship. One day Harun found a love letter that Zaynab wrote to Yamina. He became extremely furious and beat up Yamina with a stick, calling her a “sodomite woman” and threatening her with killing her “if she brings more shame on her family”. After this event Yamina could not see any other option than to leave her family home.

C) **Ivan** was born in a large city in Eastern Europe. In his childhood, he was already “different”, as he preferred playing with dolls rather than cars, and he preferred chatting with his female friends to playing football or war games with his male classmates. For this reason, he was often verbally harassed and intimidated by other children. He often felt miserable during his school years, also for seeing his parents suffering so much because of him. Around the age of 14–15, Ivan started feeling sexually attracted to men, and a special emotional devotion to Yuriy, one of his classmates. As adolescence came, Ivan felt depressed and ashamed of himself. He was so afraid of rejection and repugnance that he never revealed his feelings to Yuriy. His only support was Zhana, his best friend, with whom he could discuss everything. After high school Ivan was admitted to university. It was around that

time that he started visiting gay websites on the internet and started going out to a night club which was known to have “gay clientele”. When he was 20, he “came out” to his parents (told them that he was gay). His parents asked (basically forced) him to see a psychiatrist on a few occasions. As the psychiatrist confirmed that Ivan is homosexual and “there is nothing he can do about this”, Ivan’s parents gave up and never talked about this topic any more. However, the atmosphere at home became almost unbearable for Ivan, as his parents continuously made him feel that they would all feel better if he left to live somewhere else. At the age of 21, he got involved in a small informal gay rights group at his university. When they wanted to hold an awareness-raising session on the occasion of the annual “gay pride event”, the dean banned their initiative. After this, Ivan was verbally abused on a regular basis by fellow students at his university. The next year they joined other informal gay and trans rights groups and held a small demonstration. A group of extremists attacked them, seriously beat some of them (also Ivan suffered an injury), while the police did nothing to protect them. After this experience Ivan got seriously depressed and felt that his life and health is in danger if he remains in his home country, as he will never be able to live a dignified life as a gay man.

D) Azar was born as a girl in a larger city of a Middle-Eastern country. Azar’s parents belonged to the urban, intellectual middle-class. Azar was already very different from other girls in primary school. She always stole her brother’s clothes and preferred wearing them instead of hers. She also preferred playing with her brother in the courtyard of their house, rather than playing with her female classmates from school. When she became a teenager, she had to start wearing the headscarf and follow the strict local rules for women’s clothing. But while her classmates did everything to look as feminine as possible (thus revolting against the restrictive clothing rules), Azar tried to look as masculine as possible, once she even drew a moustache on her face. As the “strange girl of the class” she was an outcast at school and felt horribly isolated, especially after her brother went to university and moved to another country. As is common during adolescence, due to hormonal changes, her body was becoming more and more feminine, Azar was feeling increasing discontent (and sometimes even disgusted) by her own body. By the age of 18, Azar realised that she actually feels like a “man in a woman’s body”. She increasingly started referring to herself as “he” and using the name **Reza**, instead of Azar.<sup>27</sup> After finishing high school Reza remained at home most of the time. He was afraid that the police or the religious militia will arrest him or that other people will verbally or even physically abuse him in the street because of the way he looks. He also found resources on the internet that explained what his “problem” was. He got seriously depressed and even tried to commit suicide. His parents understood the situation (the fact that his mother was a psychologist helped a lot), and even if this was very painful for them, they decided to support Reza in whatever may come. They knew that national law allows for sex reassignment, but also understood that as a trans man, Reza will face enormous difficulties and will be constantly in danger if he remains in the country. This is why Reza finally decided to leave the country.

These personal stories have a number of common points and elements. There may be significant differences, too. Try to identify all the common and different points and prepare a list. Keep it at hand, as we will use it later.

<sup>27</sup> Accepting Araz’s choice we will call him Reza from now on.

As we have seen in the previous parts of this chapter, assessing the credibility of the applicant's sexual orientation or gender identity represents a different challenge than credibility assessment in most other types of cases. Due to the strong link with an individual's most intimate sphere, emotions, sexuality, shame and stigma, **asylum interviewers and decision-makers should be extremely careful** when establishing the material facts and circumstances of such cases. We have seen a number of examples of methods and questions that must be avoided. In the following section, this chapter will provide tools on how credibility can actually be assessed in these specific cases.

The first step in this direction is to understand that gay and trans people very often **go through a long and painful process** until they reach a point when they come to terms with their identity, differing from that of most other people around them. This is true even in societies where gay or trans people are not overtly persecuted any more, and even in those contexts where differing sexualities are now relatively accepted. Most asylum-seekers who claim protection based on their sexual orientation or gender identity have already gone through at least a part of this process. The most important common element is that the asylum-seeker is **not living a “heterosexual narrative”** (i.e. cannot identify with the stereotypical expectations on how a straight man or woman should behave, love, engage in sexual activities, perceive him/herself, etc. in that particular social context). Discovering their “journey” will help decision-makers formulate questions and apply credibility indicators properly.

As you can see from the four case studies, **this journey is highly personal; therefore there is no template questionnaire** for testing sexual orientation or gender identity. **The Difference, Stigma, Shame and Harm Model (DSSH<sup>28</sup> Model) provides guidance on how to understand this journey**, as well as “trigger questions” to enable for in-depth questioning. The model will not provide a one-size-fits-all recipe equally applicable in all relevant cases, nor will it provide a list of set questions. Yet in practice, the DSSH Model has been found internationally to be a useful tool to orientate the decision-makers in assessing the credibility of asylum claims based on sexual orientation or gender identity. The DSSH Model was created in 2011 by S. Chelvan,<sup>29</sup> as a humane method of establishing an asylum claim based on sexual or gender identity, has been endorsed by the UNHCR<sup>30</sup> and at the time of writing it is already used by asylum authorities in New Zealand, Sweden, Finland and the United Kingdom.<sup>31</sup>

## 2. The DSSH Model

While all “journeys” are different, there are some **basic characteristics or elements that are likely to be common** in many them. These are difference, stigma, shame and harm and they are usually closely connected with each other. Did you identify these or similar ones when reading the case studies? Now let's see them in more detail.

### DIFFERENCE

All lesbian, gay, bisexual and trans persons live their life in **heteronormative societies** (where being straight and identifying with one's biological sex is the norm). Therefore the journey usually starts by discovering that an individual is, in some way, **different**.

<sup>28</sup> Usually pronounced as [DISH]

<sup>29</sup> Barrister at No5 Chambers, London, United Kingdom

<sup>30</sup> UNHCR SOGI guidelines, Para. 62

<sup>31</sup> The DSSH Model was first reported in: UNHCR – International Association of Refugee Law Judges (IARLJ) – European Legal Network on Asylum (ELENA), *Informal Meeting of Experts on Refugee Claims relating to Sexual Orientation and Gender Identity*, Bled, Slovenia, 10 September 2011. In October 2014, Newsweek Europe referred to the model as “a simple starting point which cuts across borders”.

## EXERCISE XI.f

How did Manuel, Yamina, Ivan and Reza realise that they were “different”? Try to identify the relevant turning point(s) or processes in all cases.

There are number of misunderstandings about how this difference is lived in practice, for example:

NOT ONLY SEX	<p>It is a common misconception that this difference is always related to sexuality. Actually, this recognition of difference, specifically with respect to gender-norms, <u>often pre-dates sexual awakening and occurs in childhood</u>. Difference can be perceived in what kind of “<u>gendered</u>” <u>activities</u> a child prefers or whether she/he has mainly friends from the opposite sex (Ivan’s difference was already clear in his childhood: he mainly had female friends and preferred girls’ games and activities). It can be first perceived through <u>strong emotional ties</u> (not necessarily immediately accompanied by sexual attraction) to a person of the same sex (both Manuel and Yamina understood their difference when they started to have feelings perceived to be unusual towards a friend of the same sex). It can also be manifested through an inexplicable feeling of <u>isolation, loneliness, or even depression</u> (we don’t know from the story, but Manuel may have already had depressing or confusing feelings during his adolescence which he did not manage to “decode”, etc.). Of course, difference is often lived and discovered through the awakening of <u>sexual and emotional attraction</u> to a person or to persons of the same sex.</p>
NOT ONLY STEREOTYPICAL DIFFERENCES	<p>There are no stereotypical recipes of how gay or trans people should realise they are different from others. Ivan preferred to play with dolls and got along better with girls than with boys as a child. Reza (while perceived as a girl by his environment) preferred dressing as a boy and playing with his brother, and he drew himself a moustache. These are “<u>stereotypical</u>” differences (using this term here in a strictly non-negative way), as they <u>indicate a level of identification with the other gender</u>. Such experiences of difference are common in the life of gay and trans persons. At the same time, not all of them show discomfort and non-conformity with gender roles at young age. Manuel liked cars and playing football, he became a car mechanic by profession and had a girlfriend. Yamina got married to a man, had three children and was a “good housewife”. Both of them seemed to be <u>in conformity with the society’s gendered expectations</u>. In these cases difference is manifested in other ways: unusual feelings, strong emotions towards another person of the same sex, etc.</p>
CAN COME EARLY OR LATE	<p>Experiencing difference <u>can happen at any age</u>. Ivan’s and Reza’s difference was already apparent to both themselves and their surrounding in childhood. This is common, but not obligatory phenomenon in these journeys. Manuel and Yamina, on the other hand, only started perceiving their difference as adults. The moment when a gay or trans person’s difference is perceived and understood by the person concerned and her/his family is therefore <u>highly individual and will depend on a number of personal and contextual factors</u>. In societies where sexuality is a strict taboo and the two genders are separated from each other in many spheres of life (like in Yamina’s case) it may take more time to realise such difference than in contexts where there is more sexual freedom and genders are in continuous contact with each other (like in Manuel’s or Ivan’s case). In societies where women are expected not to have sexual desires and/or where women are in a strongly inferior power position as compared to men, lesbians may often understand their difference later than gay men. Therefore, <u>while focusing on difference in childhood and adolescence can be helpful in the majority of cases, it must not be treated as an obligatory element of credibility assessment</u>.</p>



## TURNING POINT AND/OR PROCESS

Perceiving and understanding difference is usually a long and painful process. For Ivan it probably took several years to understand why and how he was different from the first sad experiences in his early childhood to joining a gay rights association at university. The same goes for Reza who also spent several years between the early memories of not wishing to wear a skirt to explicitly understanding that he is man in a biologically female body. Yamina and Manuel are probably just starting to understand their difference. At the same time, there may often be important turning points or milestones in this process. For example, when Yamina had her first intimate encounter with Zaynab, when Manuel declared his feelings to Juanjo or when Ivan joined the gay rights association. A turning point can be meeting the first other gay or trans person in one's life, reading the first article about sexual and gender diversity or spending some time abroad. However, understanding a gay or trans person's difference never happens in just one day. Therefore while turning points or milestones can be useful to discover, there will never be a single point in a person's life when "she/he became gay or trans".

In practice, difference can be manifested in a number of ways. As UNHCR guidance summarises:

*Sexual orientation and gender identity are broad concepts which create space for self-identification. Research over several decades has demonstrated that sexual orientation can **range along a continuum**, including exclusive and non-exclusive attraction to the same or the opposite sex. Gender identity and its expression also take many forms, with some individuals identifying neither as male nor female, or as both. Whether one's sexual orientation is determined by, inter alia, genetic, hormonal, developmental, social, and/or cultural influences (or a combination thereof), **most people experience little or no sense of choice about their sexual orientation**. While for most people sexual orientation or gender identity are determined at an early age, for others they may continue to evolve across a person's lifetime. Different people realize at different points in their lives that they are LGBTI and their sexual and gender expressions may vary with age, and other social and cultural determinants.<sup>32</sup>*

Below are some examples of themes that can be explored during asylum interviews in order to identify the material facts and circumstances (non-exhaustive list):

- ? Recognition that the applicant is **not like other girls/boys** in childhood or adolescence (or like other women/men later on) with respect to gender roles;
- ? Experiences of **emotional isolation, distress**, etc.;
- ? Gradual recognition of sexual and emotional **attraction to members of the same sex**;
- ? Gradual recognition of **gender difference** in gender identity claims;
- ? Experiences of **same-sex conduct** (don't forget that under EU law it is prohibited to ask sexually explicit questions!);
- ? Experiences of **relationship** and strong emotional ties with someone from the same sex;
- ? Personal experience of **living differently** from straight people;
- ? Association with other gay or trans people – **"group-differentiated identification"**;
- ? Any particular **turning point or milestone** that helped realise and understand her/his difference.

Finally, it is recommended to use **open questions ("who", "what", and "how")**, rather than focusing on the "when" issue. First, as we saw in Chapter V, human memory is typically weak in retaining exact information about time, duration and frequency.<sup>33</sup> Second, as stated above,

<sup>32</sup> UNHCR SOGI Guidelines, Para. 9 – emphases added, footnotes omitted

<sup>33</sup> See Chapter V.3 in Volume 1



while there may be important milestones in the process of realising her/his difference, this never happens in one day. Therefore the very common questions of “when did you become gay” or “when did you realise you were gay” will be of limited use in most cases.

## STIGMA

Having identified “difference” leads to the recognition and experience of stigma. Gay and trans people suffer from or recognise the stigma attached to their difference, as they do not conform to the social, cultural and religious norms of their host country. Stigma is a Greek word (*στίγμα*), the relevant meaning of which is extreme social disapproval of or discontent with a person or group, based on a certain characteristic that serves to distinguish them from other members of a society.

### EXERCISE XI.g

How did Manuel, Yamina, Ivan and Reza experience stigma? By whom?

With various typical elements, stigma can still take **quite different forms**, based on the individual and contextual circumstances. Stigma, in this context, means **recognising that society (or a certain sector thereof) disapproves of an individual’s sexual orientation or gender identity**. “Disapproving” can mean various types of judgment and their combination, for example considering that being lesbian, gay, bisexual, trans, intersex, or simply not conforming with gender roles is:

- Unacceptable;
- Immoral;
- Sinful;
- Ridiculous;
- Socially or genetically inferior; and/or
- Disgusting.

The source of stigma can be for example:

- Family members, partner;
- Friends, teachers, colleagues, classmates or neighbours;
- State organs, law enforcement agencies, the legislator;
- Religious leaders or mores, cultural customs, political groups;
- The “majority”, etc.

Stigma may be manifested **directly against the individual concerned** (Harun disapproves Yamina’s “close friendship” with Zaynab and calls her a sodomite woman), or **indirectly against a group or a general identity** (the use of the term “gay” or its synonyms as a general pejorative term; the Dean bans Ivan’s initiative to hold an awareness-raising event).

Stigma can take **implicit forms** (disapproving or strange looks in the street), but can also be manifested **explicitly** (a blatant historical example was when gay persons were obliged to wear a pink triangle in Nazi Germany).



Stigmatisation (both direct and indirect) **seriously reduces – or even completely eliminates – the supportive circle around the gay or trans asylum-seeker**, as compared to many other persons in fear of persecution based on other Refugee Convention grounds. While a person at risk because of her/his religion, political activity or ethnicity may often find support in her/his micro-environment (family, friends, community), in the case of many gay or trans asylum-seekers **this micro-environment is often the main source of fear and harm.**<sup>34</sup>

In most cases, it may be helpful in the credibility assessment process to focus on:

- ? **Exploring how difference led to stigma** (for example Reza’s and Ivan’s non-conformity with gender roles made them outcast at school);
- ? **What forms of stigma** the person experienced, or recognised was attached by society to gay or trans people (either directly or indirectly) and by whom, how did they realise that their difference is a problem in the eyes of society, their family, etc.;
- ? **Why they thought stigma arose**, what important social/legal/cultural/religious/etc. norms they were not in conformity with, etc.;
- ? **Any person in the micro-environment who was not influenced by the stigma** (for example best friend, parents, etc. – someone to turn to for support).

Again, there may be important turning points when the person started to perceive her/his stigmatisation, but for the same reasons as in the case of difference, **it is not recommended to put too much emphasis on the “when” question.**

Finally, don’t forget that the **understanding of difference may happen in parallel to the perception of stigma.** Sometimes, a gay or trans person’s surroundings (family, friends, neighbours, etc.) may perceive the person as different earlier than she/he can understand her/his own difference. In these situations stigmatisation forces the persons concerned to face her/his own difference (for example, it is possible that Yamina only realised her difference when Harun called her a “sodomite woman”).

**SHAME**

Shame is a natural consequence of stigma. The disapproval and other negative messages of society are **inevitably internalised**, and thus lead to a feeling that the difference of the person,

<sup>34</sup> This is generally quite typical in gender-related asylum cases; see the example of Maria-João and João-Maria in Chapter X.1.

coupled with stigma, is **something wrong, which needs to be changed or at least hidden**. In some cases, this internalisation process is so strong that it leads to explicitly homophobic attitudes and behaviour. The feeling of shame does not need to reach the level of severe mental anguish and suffering. It is a natural consequence of stigma, that as a human being, they will then experience shame. Shame can also result from indirect stigma (see above): **it is not necessary to be personally identified and stigmatised as someone “different”**, often the generally existing homo- or transphobia (for example using homophobic expressions as general pejorative terms can teach children from a very early age that being gay, or not conforming with gender norms, is something shameful).

Shame usually involves a fear of suffering harm, which may lead to different **avoidance strategies**, such as:

- Revealing one’s actual sexual orientation or gender identity to a very limited circle of people (for example only the closest friends);
- Not revealing one’s actual sexual orientation or gender identity to anyone;
- Refraining from engaging into any sexual or emotional relationship (which may be difficult if there is significant social pressure to get married and have children);
- Living sexuality in an extremely discrete manner;
- Living a double life (for example getting married and having children, while having occasional same-sex encounters) to evade detection;
- Participating in “therapy” to “cure” sexual orientation or gender identity;
- Overemphasising traditional gender roles or even adopting homophobic attitudes.



All of these strategies mean that the gay or trans person **remains “in the closet”** and will not be able to come to terms with her/his real identity, especially openly identifying as gay or trans. Some of these strategies only involve **hiding** the person’s sexual orientation or gender identity, while others may go further and even lead to complete **self-denial**. Many gay or trans individuals go through such a phase.

At the same time, gay or trans individuals who can and decide to live their life according to their actual sexual orientation, or gender identity, may also **keep on carrying a heavy burden of shame**. It may take years, decades or even a lifetime to get rid of the deeply internalised shame which arises from stigma.

A long-term feeling of shame and self-denial usually causes **highly negative psychological consequences** and makes it **extremely difficult for the people concerned to talk freely, and openly**, about their difference and the journey they have been through. There may also exist a history of depression and suicide attempts.

In most cases, it may be helpful in the credibility assessment process to focus on:

- ? **The applicant’s feelings about her/his own sexual orientation or gender identity**, including changes in this (gradual self-acceptance vs. gradual internalisation of stigma, or both);
- ? **Coping strategies** (for example whether the applicant found relief or guidance in religion, spirituality, work, love, friendship, etc.);
- ? **Avoidance strategies** (whether shame forced the applicant to hide or deny her/his sexual orientation/gender identity. If yes, were there any spheres of private life where the applicant could reveal her/his true identity, etc.), including any eventual change in these strategies, etc.
- ? **The impact of living with a constant feeling of shame** (including on mental and physical health, personal relations, work life, etc.).

## HARM

Difference, stigma and shame exist in the majority of narratives of lesbian, gay, bisexual, trans and intersex people, even in countries where there exists no risk of persecution. What identifies the refugee? **The fear of suffering harm because of their sexual orientation and gender identity.** Harm is connected to stigma, which makes the gay or trans person **extremely vulnerable and “singled out”** from society. In the DSSH model, harm should be understood **in a comprehensive manner**, not limited to those practices that qualify as persecution in refugee law. The following table provides a non-exhaustive overview of the different types of harm a gay or trans person may suffer:

Physical harm	<ul style="list-style-type: none"> <li>■ Execution, honour killing;</li> <li>■ Torture, inhuman or degrading treatment, physical or sexual violence, beating, other forms of physical abuse;</li> <li>■ Arbitrary detention and intimidation</li> <li>■ Mob violence or homo/transphobic “bullying”;</li> <li>■ Slavery or servitude, forced prostitution;</li> <li>■ Detention, limitation of the freedom of movement, etc.</li> </ul>
Socio-economic harm	<ul style="list-style-type: none"> <li>■ Discrimination (school, work, social services, etc.);</li> <li>■ Unemployment, lack of health services, poverty, lack of career opportunities;</li> <li>■ Exclusion from family support, inheriting, etc.</li> </ul>
Legal harm	<ul style="list-style-type: none"> <li>■ Criminalisation (same-sex relations and/or gender non-conforming behaviour), even when not enforced provides a sense of impunity to those who persecute;</li> <li>■ Lack of legal recognition and/or equality (for same-sex relations, gender change, sex reassignment, etc.).</li> </ul>
Spiritual harm	<ul style="list-style-type: none"> <li>■ Exclusion from religious groups and activities, excommunication;</li> <li>■ Exclusion from cultural heritage, local community, etc.</li> </ul>
Medical-psychological harm	<ul style="list-style-type: none"> <li>■ Post-traumatic stress disorder;</li> <li>■ Depression, anxiety, isolation;</li> <li>■ Hopelessness, suicidal tendencies and attempts;</li> <li>■ Self-denial, self-hatred, shame and guilt;</li> <li>■ Psycho-somatic symptoms and diseases related to constant stress, deterioration of mental and/or physical health due to other types of harm, etc.</li> </ul>

As you can see, **harm can come from all types of actors**, from the state legislator to the applicant’s closest family (similar to stigma – see above). Many of these types of harm are common to several refugee stories; however, there are certain types that are somewhat more



typical to lesbian, gay or trans asylum-seekers. These include, for instance, forced prostitution, so-called “curative rape” in the case of lesbians, mob violence or honour killing (in the name of the family’s or the community’s honour), or forced sex reassignment of gay men in countries where gender transition is legal, while homosexuality is not.

Usually, there is a **causal link** (nexus) between the applicant’s sexual orientation, or gender identity, and the harm suffered. However, there may be specific situations in which the harm is not directly related to these factors, but the victim **does not have access to appropriate protection** because of her/his sexual orientation or gender identity (for example, a trans person is afraid to report an armed robbery to the police, being afraid of suffering additional harm by the latter – this time because of the victim’s gender identity). In most cases, the harm and the lack of protection go hand in hand: Ivan, for example, was attacked by extremists during the gay pride demonstration, and the police refused to protect him.





Finally, the assessment process should not only focus on harm that the applicant actually suffered in the past, but **it should also explore her/his fear of future harm**. Maybe “the closet worked” for the applicant in the sense that she/he could avoid physical, legal or economic harm until now. But also in these cases, **a fear of harm** will always be present. While credibility assessment in the two-phase model<sup>35</sup> refrains from the legal analysis of future risk, this type of information **should be considered as part of the present facts** that are material for credibility assessment.

## XI.4 Using credibility indicators in the DSSH framework

Asylum cases based on sexual orientation or gender identity constitute **a specific type of gender-based asylum claims**. Chapter X puts forward a number of recommendations and points of caution regarding the use of credibility indicators<sup>36</sup> in gender-related claims, which are all valid for this particular type of cases as well. Therefore, this sub-chapter will only emphasise, in brief, a few especially relevant and/or additional points.

### 1. Pre-conditions: safe space and right words

Gay and trans asylum-seekers are **among those who most need a genuinely safe space** for the asylum interview. Unlike many other asylum-seekers, it is maybe the first time they can (and are expected to!) openly talk about the reason for leaving their home behind and all the harm suffered. The ground for persecution in their case usually leads to intense shame and stigma, which makes it much more difficult for them to reveal details of their story than for many other asylum-seekers. They may not feel safe at the reception or detention centre where they stay during the asylum procedure (for example due to continued stigmatisation or harassment by other asylum-seekers or staff), etc. The safe space requirement will therefore go beyond the usual standards and will have to include:

- ✓ The possibility to be heard **without the presence of any family member**;
- ✓ Explicit guarantees of **confidentiality** (with special attention to the role of the interpreter and that they will not disclose information to the applicant’s community in the country of asylum or origin);
- ✓ The possibility to have an **interpreter who is not from the same country of origin**;
- ✓ The possibility to have **an interviewer and an interpreter of a chosen sex** (unlike in most gender-based asylum claims, there should not be a presumed preference for the same sex as the applicant’s; for example, gay men may sometimes feel more comfortable being interviewed by a female officer);
- ✓ Information about the fact that **sexual orientation and gender identity are “protected characteristics”** and if a person has a well-founded fear of persecution on these grounds, she/he has a right to protection (many asylum-seekers concerned are not even aware of this fact);<sup>37</sup>
- ✓ Ensuring the applicant that she/he will have **enough time** to reveal her/his story (if necessary with the help of a second interview);
- ✓ Ensuring the applicant at the right moment that both the interviewer and the interpreter are **prepared to talk** about these issues and to **empathetically listen** to the applicant’s story. This highlights the fact that it is the applicant’s story, and the interviewer is primarily there to listen.

<sup>35</sup> See Chapter III in Volume 1

<sup>36</sup> On credibility indicators see Chapter II.5 in Volume 1

<sup>37</sup> A practical solution can be to put a poster in the waiting room explaining this information in an understandable (explicit or implicit) way, etc.

## QUESTIONS FOR REFLECTION...

Think about the four case studies earlier presented in this chapter. How do you think the four asylum-seekers would identify themselves (as to their sexual orientation/gender identity)? Maybe...

- ✓ Ivan would say right at the beginning of the interview that he is “gay”;
- ✓ Reza would say that he is “a man in a woman’s body”;
- ✓ Manuel would say after a lot of thinking that “he is confused and he may be bisexual”;
- ✓ Yamina would only say that “she loves Zaynab”.

These are all different forms of self-identification, which indicate cultural differences and different phases of the long journey of self-acceptance. Do they make a difference when it comes to credibility assessment?

Another key pre-condition is the **proper use of terms and descriptions**. **Self-identification** will play a key role in using the DSSH model. However, you could see in this chapter that due to shame, stigma and internalised homo- or transphobia, as well as cultural differences, many asylum-seekers **may not (yet) be ready to explicitly identify themselves** as gay, lesbian, bisexual or trans. Also, in different linguistic contexts there may be **no proper and neutral terms** to describe these identities.<sup>38</sup> Some of them may prefer using other terminology, or not using any specific term to describe themselves. Some of them may even reject or feel uncomfortable with “Western” or “European” terms that describe sexual orientation or gender identity. This constitutes a significant difference with most other types of asylum claims, where self-identification may often be less difficult (“I am a Jehovah’s Witness”, “I am Marxist”, “I was fighting for human rights”, “I refused military service”, etc.).

In any case, before credibility assessment is performed,

- ✓ Both the interviewer and the interpreter should be **prepared to deal with such difficulties** (including the knowledge of locally used terms, use of alternative questioning techniques, the ability to “read between the lines”, an open-minded approach to alternative and personal perceptions of one’s identity, etc.);
- ✓ The **interpreter** should be carefully selected; she/he should preferably be **specifically trained** on interpreting in cases related to gender, sexual orientation and gender identity (including the avoidance of offensive terminology and body language).

It is recommended that **the term the applicant uses for self-identification** (especially if it is not a pejorative one) **should be accepted** by the interviewer, rather than “giving the applicant a lecture about terminology”.

<sup>38</sup> See more on these terminology-related challenges in part 3 in sub-section X.1

## 2. Applying credibility indicators – specific considerations

When assessing details and specificity, as well as internal consistence, the **focus should be on the material facts** of the case. The DSSH Model will help you identify the material elements, which means that these indicators can be applied to:

- ✓ The narrative of past and present experience and gradual recognition of DIFFERENCE;
- ✓ Feelings surrounding STIGMA and SHAME, as well as coping or avoidance strategies;
- ✓ The narrative with respect to past experiences, or present and future fear of HARM.

With regard to **internal credibility indicators**, in addition to all the points of caution mentioned in the previous chapter on gender, the following should be kept in mind:

- ! A long-standing life experience of stigma and shame has a **traumatic effect** (even if there has been no single traumatic experience, such as torture) and thus usually seriously distorts memory, limiting the applicant's ability to recall exact events in detail,<sup>39</sup>
- ! The majority of material facts in these cases are linked to **the most intimate spheres of life and the strongest taboos** in many societies, which makes it even more difficult to talk about them in specific details, and therefore the applicant may be evasive;
- ! Following the mandatory guidance of the Court of Justice of the European Union in **A, B and C, late disclosure** (the applicant did not specify sexual orientation/gender identity as the ground for being at risk of persecution in the first asylum claim) is common in these cases and this fact **cannot be used as a stand-alone argument** to reject the statement's credibility.<sup>40</sup>

With regard to **external credibility indicators**, the main specific consideration (beyond all the relevant points from the previous chapter) is related to country information. Practice shows that, indeed, in many countries there is **very little specific country information** on the situation of gay, lesbian, bisexual, trans and intersex people, due to:

- ✓ the general **invisibility** of this segment of the population;
- ✓ the presence of **stigma and shame** which impedes documentation, prosecution, etc.;
- ✓ the link to social **taboos** (such as sexuality or gender roles);
- ✓ the fact that local human rights organisations **may not always consider this as an issue of human rights**; etc.



<sup>39</sup> Cf. also Chapter VI in Volume 1

<sup>40</sup> See in detail in sub-section XI.2

This is especially problematic where there is a “double-blind” between gender and sexual orientation, resulting in, for example, lesbians being even more invisible than gay men in a male-dominated patriarchal society where women are *per se* less visible, and are not supposed to have sexual or emotional desires.

As UNHCR guidance also emphasises:

*Relevant and specific country of origin information on the situation and treatment of LGBTI individuals is often lacking. This should not automatically lead to the conclusion that the applicant’s claim is unfounded or that there is no persecution of LGBTI individuals in that country. The extent to which international organizations and other groups are able to monitor and document abuses against LGBTI individuals remain limited in many countries. Increased activism has often been met with attacks on human rights defenders, which impede their ability to document violations. Stigma attached to issues surrounding sexual orientation and/or gender identity also contributes to incidents going unreported. Information can be especially scarce for certain groups, in particular bisexual, lesbian, transgender and intersex people. It is critical to avoid automatically drawing conclusions based on information about one group or another; however, it may serve as an indication of the applicant’s situation in certain circumstances.*<sup>41</sup>

This means that when using this external credibility indicator, decision-makers will sometimes only have **indirectly relevant country information**. Considering the specific evidentiary framework of asylum cases<sup>42</sup> and the fact that gay, lesbian, bisexual, trans and intersex people constitute one of the most widely persecuted segment of the world’s population<sup>43</sup> such information can still help credibility assessment. For example:

- ✓ Where there is information about the persecution of and negative social attitudes against gay men, it can be presumed that lesbians or trans people also face similar problems, even if no specific information is available;
- ✓ Where any form of same-sex conduct constitutes a criminal act (or decriminalisation has only happened recently), there is usually a well-founded presumption that social attitudes are very negative and that no state protection is available for persons at risk because of their sexual orientation or gender identity; etc.
- ✓ Where those who act against societal norms (for example wear Westernised clothes instead of traditional clothes), it is likely that gay and trans people will also be at risk persecution.

However, due to the reasons above, **the lack of such specific information should never be understood, in itself, as a positive indication** concerning the situation of gay and trans people in the country. Due to the invisibility, only the harm directed towards the tiny minority of activists may be documented.

### **3. The decision-maker’s individual and contextual circumstances**

In Chapter IV and VIII we saw that the interviewer’s and/or the decision-maker’s individual and contextual circumstances also play an important role in the credibility assessment process. This – somewhat obvious – statement deserves a special note of caution within the context of asylum cases based on sexual orientation and gender identity.

<sup>41</sup> UNHCR SOGI guidelines, Para. 66

<sup>42</sup> See Chapter I in Volume 1

<sup>43</sup> See in sub-section XI.2 of this chapter

European societies are themselves not free from **homo- and transphobia**. A number of surveys confirm that a large part of Europeans would still feel uncomfortable to have a gay or trans child, neighbour, classmate or president. Discrimination is still present in various spheres of life. There are strong differences in this respect within Europe itself, and there are also countries in the region which have only decriminalised same-sex relations relatively recently. **Stereotypes and feelings of embarrassment** in relation to these groups are deeply rooted even in those European societies which have shown spectacular progress in this respect in recent decades. Outside some larger urban centres, the **visibility** of gay and especially trans and intersex people may be extremely limited.

In consequence, **asylum decision-makers are not necessarily free from stereotypes or negative feelings** either. Attitudes towards “homosexuals” and others not conforming to expected gender roles are part of each person’s “package” received through an individual’s socialisation (or can be seen as deep layer in the onion of identity, as presented in Chapter VII). While sensitisation can change these attitudes, it is clear from long-standing practical experience that dealing with asylum claims based on sexual orientation or gender identity is **not a task for everyone**. For interviewing, assessing credibility and decision-making in these highly sensitive and vulnerable cases **developing specific skills and attitude** is necessary. Also, it is recommended that **specialised interviewers/decision-makers** deal with these cases after specific training, and those not entirely comfortable with the issue should not be obliged to do so.





**SUMMARY**

**CREDIBILITY ASSESSMENT IN ASYLUM CASES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY**

**CHECKLIST**

FUNDAMENTAL PRINCIPLES	BEING LESBIAN, GAY, BISEXUAL, TRANS OR INTERSEX IS...	NOT A DISEASE
		NOT A CHOICE
		NOT A LIFESTYLE
		CURRENT IDENTITY
		A HUMAN RIGHT
PRACTICES PROHIBITED UNDER EU LAW	NO ASSESSMENT BASED ON STEREOTYPES	
	NO QUESTIONING ON SEXUAL PRACTICES	
	NO ADMISSION OF EVIDENCE SHOWING SEXUAL ACTIVITIES	
	NO "TESTS" (MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL, TEMPLATE)	
	NO REJECTION OF CREDIBILITY JUST BECAUSE OF LATE DISCLOSURE	
STANDARDS FOR PROPER CREDIBILITY ASSESSMENT	THE <u>DSSH MODEL</u> – HELPS YOU EXPLORE THE APPLICANT’S PAINFUL “JOURNEY”	DIFFERENCE
		STIGMA
		SHAME
		HARM
	CREATE A <u>SAFE SPACE</u>	TRUST, SECURITY, CONFIDENTIALITY
		TIME
		AWARENESS OF THE POSSIBILITY OF PROTECTION
	FIND THE <u>RIGHT WORDS</u>	INTERCULTURAL COMPETENCE
		CHOOSING THE RIGHT INTERPRETER
	FOCUS ON <u>MATERIAL FACTS</u>	THE DSSH MODEL CAN SHOW YOU WHICH ELEMENTS ARE MATERIAL
	USE CREDIBILITY INDICATORS WITH GREAT <u>CAUTION</u>	AWARE OF ALL LIMITATIONS AND DIFFICULTIES TYPICAL FOR GENDER-RELATED CASES
		AWARE OF THE IMPACT OF STIGMA AND SHAME ON THE ABILITY TO TALK
		AWARE OF THE DIFFICULTY OF SELF-IDENTIFICATION IN CERTAIN CASES
AWARE OF THE LIMITS OF COUNTRY INFORMATION		
BE AWARE OF AND WORK ON YOUR OWN <u>STEREOTYPES AND LIMITS</u>		

## HOW CAN YOU BE BETTER PREPARED FOR CREDIBILITY ASSESSMENT IN ASYLUM CASES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY?

### Knowledge

Understand what gender, sexual orientation, gender identity and gender expression mean and how they are related to each other;

Learn about sexual and gender diversity, become familiar (at least in general terms) with what science knows about sexual orientation and gender identity;

Read and understand the relevant UNHCR Guidelines and the A, B and C judgment of the EU Court of Justice;

Learn the DSSH Model, and understand why it is useful;

Understand and take account of the reasons why it is difficult for an asylum applicant to disclose persecution based on sexual orientation or gender identity;

Learn about “gay and trans history” in Europe and other parts of the world in order to understand how and why societal attitudes change;

Learn about the lesbian, gay, bisexual, trans and intersex persons in your own country and asylum-seekers’ country of origin;

Learn more about relevant terminology in your own language and the languages asylum-seekers use;

Learn about the psychological and health-related impact of constant stigma, shame, stress and “living in the closet”, that are so common for these cases;

### Skills

Implement the DSSH Model and the UNHCR guidelines, continuously assess their use in practice (what questions, techniques work, which are the most challenging points, etc.);

Practice listening skills to get the most evidence during asylum interviews – listen for the gaps and probe gently and appropriately; practice how to “read between the lines” when, due to shame or lack of vocabulary, indirect communication is used;

Learn how to create a “safe space” to help the asylum-seeker to reveal difficult issues and overcome the effects of stigma and shame;

Learn how to avoid (directly or indirectly) intimidating or offensive body language during asylum interviews;

Establish good cooperation with specialised interpreters;

### Attitude

Learn to approach individual “journeys” of lesbian, gay, bisexual, trans and intersex people with an open mind; it will help you gain better information about the application;

Be aware of your own stereotypes, assumptions, expectations and values and learn how to limit their impact on your communication and the decision-making process; be ready to acknowledge if these cases are “not for you”;

Be aware that gay and trans identities, as we know them in Europe, are also cultural constructs and intercultural competences may be needed to properly understand and work with similar identities from other cultural contexts;

Understand the concrete aspects in which these cases are different from other asylum cases; etc.



## XII. CREDIBILITY ASSESSMENT WITH CHILDREN

### SETTING THE SCENE

Unaccompanied minors are numerous among asylum-seekers not only in Europe, but all around the world. Assessing the credibility of asylum claims presented by children is particularly challenging and requires special preparedness. Besides some additional child-specific difficulties, several distortion factors presented in the previous chapters may appear more intensely or in a different way when interviewing children. In this chapter we will:

- ✓ Understand how the **child's development** affects her/his ability to recall past events;
- ✓ Examine the **child-specific factors** (related to culture, mental health and shame) that have to be considered in the credibility assessment process;
- ✓ See how the **decision-maker's own assumptions and circumstances** play an important role in these cases; and
- ✓ Summarise how all these factors **affect credibility indicators** in practice.

### XII.1 Defining child development

#### EXERCISE XII.a

Write a list of factors (events, changes in body, social status, etc.) that may indicate the beginning of adulthood in any cultural, social, etc. context (not just yours). Try to think about as many different ideas as possible.

Once the list is ready, mark which of these each events or changes did personally happen to you and when.

Adulthood, or the age of majority, is set at **18 years** in European asylum law. However, there is much more variation across cultures about when someone becomes an adult. The transition from childhood to adolescence is defined by the beginning of puberty, but the transition from adolescence to adulthood is less clearly defined, as highlighted in the quote "**adolescence begins in biology and ends in culture**".<sup>1</sup>

Evidence from psychology and neurology indicates that there is particularly **rapid body and brain development which occurs during adolescence and continues past the age of 18 years** into the early twenties. Puberty triggers development which include changes in the brain, particularly the frontal lobes – a part which allows for better planning, abstract thinking, understanding oneself and others, and language development. The environment in which someone develops will also play an important role in shaping them. You may easily understand

<sup>1</sup> J. Conger and A. Petersen, *Adolescence and youth: Psychological development in a changing world*, New York, 1984

the complexity of this process by looking at the list you prepared in the previous exercise. Most people enumerate several different experiences (final school exam, moving out of family home, obtaining driving licence or first car, first paid job, entering or finishing university, first sexual or relationship experiences, religious ceremony, marriage, first independent travel abroad, significant bodily changes, etc.), which usually happen throughout a period of several years.

## 1. Stages of development – developmental changes

Most unaccompanied asylum-seeking minors are **between the age of 12 and their 18<sup>th</sup> birthday**. In this training manual we refer to these minors as “children” which is consistent with terminology in the United Nations Convention on the Rights of the Child. However, it is important to distinguish between **young children** (11 years and under) and **adolescents** (12–18 years), when considering a child’s ability and capacity. This is because there are rapid changes which affect thinking processes, memory, risk-taking, and emotional understanding which change depending on their age and developmental stages.

Children are **not simply “adults in miniature”**;<sup>2</sup> they are undergoing rapid development which does not finish until as late as early twenties. Some changes are very obvious, such as when a baby learns to walk, or the bodily changes in an adolescent entering puberty. But other changes cannot be detected by our eyes, such as development of parts of the brain in adolescence which influence how that person thinks. Technology such as magnetic resonance imaging (MRI scans) has allowed us to understand much more about when and how these changes happen.

	YOUNGER ADOLESCENTS	→	OLDER ADOLESCENTS
CHANGES IN THINKING PROCESSES	The developments in the brain during puberty influence the way in which someone thinks. Children and early adolescents <u>think about things in a more concrete way, making assumptions based on their own experiences</u> . For example they may think “the authorities have exploited me and my family in the past, so all people in authority do this”.		But during adolescence, brain changes allow thinking to <u>become more abstract</u> . This means adolescents begin to think beyond their own experiences and consider <u>others’ perspectives</u> . For example, an older adolescent might think “although I have experienced exploitative authorities in my home country, the rules and values of the authorities in this country might be different”.
RESPONSE TO RULES	Differences in thinking also affect how children understand and respond to rules. Young adolescents are more likely to <u>follow a rule regardless of the consequences</u> , just because it is a rule.		By contrast, an older adolescent who has developed abstract thinking might question the rule and <u>make their decision based on their own values</u> . However it is important to remember that this will differ between individuals depending on their culture, gender and individual nature.

<sup>2</sup> J. Bhabha and W.Young, “Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines”, International Journal of Refugee Law, 11/1 (1999), 84–125



EMOTIONS AND RISK-TAKING	<p>Adolescence is usually a time when, due to <u>hormonal changes</u>, emotions feel much more intense. As these new feelings surge through the body, the skills in understanding and regulating emotion might not be fully developed yet. Consequently younger adolescents are more likely to feel <u>overwhelmed by their emotions</u> and <u>may act before thinking about the consequences</u>. Adolescents can therefore be more impulsive, and seem to be <u>more likely to take risks</u> that an adult would be unlikely to take.</p>	<p>Older adolescents develop <u>more understanding and control of their emotions</u> and are able to make links between their emotions and behaviour and can adjust their responses accordingly. This means that they can evaluate the risk and reward of their actions more effectively. While this skill is still developing, adolescents may seem unpredictable.</p>
UNDERSTANDING OTHERS	<p>Children think that everyone sees and experiences the world the way they do – this is called “<u>egocentrism</u>”. As they grow and their brain develops, they learn that other people have different ways of seeing and experiencing the world. By young adolescence, this skill of understanding another’s perspective is more developed, but can still fail them at times. Other times, their understanding of another’s thoughts and feelings might be quite limited.</p>	<p>The developing understanding of emotions and ability to think abstractly also affects how adolescents understand other people. This allows more understanding of what another person might be thinking or feeling, and so they <u>learn to adjust their responses</u> according to this. It is important to consider how this might affect an asylum interview. For example, if the adolescent is overwhelmed by their own emotions they may struggle to think about another’s perspective. This might happen in an asylum interview, when the anxiety overwhelms them and they cannot think about what information the interviewer needs to hear and may not disclose information relevant for their claim.</p>

### QUESTIONS FOR REFLECTION...

During your adolescence, did you ever do something in the heat of the moment which you regretted later? Can you recall how you felt when you took the risky decision? Why did you regret it? When did you first realise that you had done something “regretful”? Immediately, or only months or years later?

These differences between adolescents and adults also highlight the danger of decision-makers assessing a child’s credibility by comparing it with what they think they would have done in the same situation. **A decision-maker, who is an adult, is likely to have a different perspective and way of thinking to a younger child.**<sup>3</sup>

## 2. Cultural differences in defining childhood, adolescence and adulthood

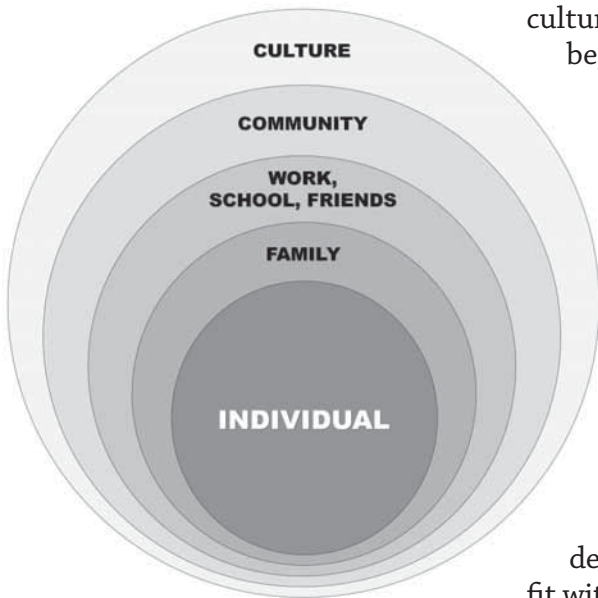
These developmental changes do not occur in a vacuum; rather they happen through **multiple interactions between the child’s biology and their environment**, for example, cultural background, parents, relationships, education and personal experiences.<sup>4</sup>

Cross-cultural differences are present due to a country’s legal system, social organisation,

<sup>3</sup> See Chapter XII.4

<sup>4</sup> The different “spheres” with which the child interacts are described in Urie Bronfenbrenner’s ecological systems theory (see illustration) – Urie Bronfenbrenner, *The ecology of human development*, Harvard University Press, 1979

family structure and the type of economy influencing that culture. For example, in Bangladesh, the working age begins at 12 years; drinking alcohol is legal for 16 year olds in Germany, but only at 21 years in USA; and marriage is legal from age 15 years in Ethiopia. These frameworks influence how a person is viewed in terms of capabilities and responsibilities at different ages.



**Different cultures therefore have different expectations** of children which will in turn shape how the child behaves and what experiences they are exposed to. For example, Western cultures typically consider childhood a time of innocence and spontaneity, so children may be asked to make less important decisions or given more time to play. This may not fit with the experiences of an asylum-seeking child, who may have had increased responsibility from a much younger age. This means that in different societies, cultures, etc. **children**

**at the same age may be at extremely different phases of the transition from childhood to adulthood.**

## AT THE AGE OF 16 ...



In addition, the extraordinary experiences of many asylum-seeking youth may have led to **highly developed skills in some areas** (i.e. ability to care for themselves and independence), but **significantly less developed skills in other areas** (i.e. poor ability to regulate their own emotions due to early separation). As a result, an asylum-seeking child may present with “**uneven**” development which is much less common among children who have not been exposed to such difficulties.



*Changes in both the body and the brain which can influence the thinking process and risk-taking occur rapidly during adolescence. These changes can also help young people to better understand another person's emotions and thoughts.*

*Cultures have different ways of defining childhood, adolescence and adulthood. This may lead to certain expectations of what someone at a particular age can do or is capable of which might not fit with the society in which they are seeking protection.*

*An asylum-seeking child might also have developed at uneven rates as a result of being exposed to potentially traumatic experiences.*

## XII.2 Autobiographical memory and development

### 1. What is a coherent autobiographical memory?

Understanding the nature of memory and its limitations is important when assessing credibility issues in asylum claims. **Autobiographical memory** is a type of memory which we call upon to remember past personal events, including sensory, perceptual and emotional aspects of the memory. Many factors can influence what we recall and how it is retold, and memory processes are usually subject to **serious distortions and interferences**. Chapter V of this training manual<sup>5</sup> describes the limitations of human memory which are present even in fully developed adults. This chapter focuses specifically on **how development and age also affect autobiographical memory**.

<sup>5</sup> See Volume 1

## QUESTIONS FOR REFLECTION...

Take a minute to think back to your earliest memories – what can you remember? Are they clear, ordered memories? Are they like a snapshot? Are they multisensory (including visual elements, noises, smell, etc.)? What age were you?

Autobiographical memories usually first emerge around 2–3 years old – perhaps this is similar to the age you were in your first memory? However, early childhood memories are usually **recalled as isolated events and the person is unlikely to recall the context of the memory**. As children grow older, the amount of information and the length of their memories increase. The ability to recount memories in a coherent narrative improves significantly throughout adolescence and **does not fully mature until early 20s**.<sup>6</sup>

**Three aspects** of a memory are considered important to telling a clear and coherent narrative:<sup>7</sup>

CHARACTERISTICS OF A COHERENT NARRATIVE		
<b>TEMPORAL</b>	Ordering memory of events with clear time order	<i>Temporal coherence is the ability to order a memory in the context of time and date. This has been found to emerge around the time that children learn about time and dates. However it is important to note that there are also cultural differences in the way people recount their autobiographical memories. For example there are differences in the way time is conceptualised and the amount of importance placed on time and dates. This may also be influenced by the level of education the child has received.</i> <sup>8</sup>
<b>THEMATIC</b>	Structuring a memory into an overarching theme	<i>Thematic coherence requires the child to be able to order their memories into themes. For example, being able to draw on memories of being happy or times when they were persecuted. This capacity also increases during the course of adolescent years.</i>
<b>CAUSAL</b>	Providing description of people's motives and reasons for events	<i>Causal coherence increases most during adolescence as it coincides with increased ability to think about others and consider different perspectives. This is a more challenging task as it requires analysis of the facts in light of possible motives, as well as both the child's own and others' emotions.</i>

These skills **improve with age**. For example, a young adolescent is likely to provide a narrative with factual content and action statements, but may have less orientation in relation to time and place and fewer emotional interpretations or explanations. An older adolescent is better able to provide more detail and explanation for motives, as well as richer emotional detail.

It is important to highlight that despite these changes in how a child may talk about their memories, **their level of accuracy of events is fairly similar to that of an adult**. For example, one psychological study asked children to talk about a distressing hospital admission shortly after it had occurred. The researchers then asked them the same questions about the

<sup>6</sup> Tilmann Habermas and Cybèle de Silveira, “The development of global coherence in life narratives across adolescence: Temporal, causal, and thematic aspects”, *Developmental Psychology*, (2008) 44/3, pp. 707–721

<sup>7</sup> Taken from Habermas and Silveira (2008), see previous footnote

<sup>8</sup> On times and dates see also sub-section 3 of Chapter V.3 (Volume 1)



experiences 5 years later and found that some central parts of the story remained fairly accurate.<sup>9</sup> However it is important to note that peripheral details of the events were less well remembered, indicating that peripheral details tend to get lost both in children and adults.

## 2. Autobiographical memory: early life and cultural influences

As we learnt earlier, development is an interaction between a child's biology and their environment. This is also true of the development of autobiographical memory. Linguistic and cognitive development is necessary for developing the capacity to tell a story, but they are not enough on their own. **The conversations a child has with their parents or carers shapes the way in which that child will grow up to narrates its autobiographical memories.** Psychological studies have found that mothers who describe their own memories to their children with more detail foster children who narrate in a similar way. Psychological research also shows us that **children who have been separated from their carers have less well-developed memory systems.**<sup>10</sup> This is important when considering the narratives provided by asylum-seeking children, many of who have been separated from their parent or caregiver.

**Culture also shapes a persons' autobiographical memory.** People from individualistic cultures provide longer accounts of their memories and focus more on individual emotions, intentions and personal beliefs. In contrast **people from interdependent cultures give shorter accounts and focus more on social events and aspects, and less on individualistic experiences.** Chapter V.5 provides more detail and a useful example of this difference.<sup>11</sup> The cultural determinedness of autobiographical memory gains specific importance if we consider that most asylum-seekers come from rather collectivist/interdependent cultural contexts, while in Europe and North America individualistic and independent features prevail. This factor, if not duly considered, may lead to unfounded assumptions as to which memories and what style of recalling can be considered credible (where decision-makers project their individualistic expectations onto asylum-seekers whose autobiographical memory simply works in a different way).

Despite these differences in the length and focus of narratives it is important to emphasise **the rate at which information is forgotten does not differ** across children from different cultural backgrounds.<sup>12</sup>

## 3. Central and peripheral details

Development and age have an effect on the amount a child will recall and the detail in which they retell it. However, when it comes to the question of how accurate a young person's memory is, the research suggests that **adolescents are about as accurate as an adult.** But it is important to think back to what we learned in Chapter V.4 about the differences between **central and peripheral elements of memory.** Central details make up the core of the story, such as the who, what and where (e.g. you escaped from prison at night after paying a bribe to the chief). Peripheral details are less fundamental to the story of your memory (e.g. the exact date of your escape, the colour of the chief's uniform, etc.). However, **what is central and what is peripheral will be different** for each person and their experience, as well as in each individual context.

<sup>9</sup> Carol Peterson and Nikki Whalen, "Five years later: Children's memory for medical emergencies", *Applied Cognitive Psychology*, 15/7 (2001), 7–24

<sup>10</sup> Gunn Astrid Baugerud and Anna Maria D. Melinder, "Maltreated children's memory of stressful removals from their biological parents", *Applied Cognitive Psychology*, 26 (2012), 261–270

<sup>11</sup> See Volume 1

<sup>12</sup> Yan Chen, Helena Margaret McAnally and Elaine Reese, "Development in the organization of episodic memories in middle childhood and adolescence", *Frontiers in Behavioral Neuroscience*, 7 (2013)



Like in adults, children have **higher levels of accuracy in recalling central details** of their memories than they do peripheral ones. The difference in how accurately they remember becomes bigger when the child was distressed at the time of the event. To put it simply: under more stress you focus on the central facts of the event but can remember less the peripheral details. In this respect, there is no difference between children and adults. At the same time, **children are more likely than adults to change their answers about peripheral aspects** of a memory when they are questioned. It is thought that children are more suggestible than adults and this may be because of the power difference between children and adult interviewers and their less well-defined memories.



Autobiographical memories are the multi-sensory memories we call upon to recall our personal experiences. These memories are subject to distortions and may change each time we recall or retell them.

For both adults and children, accuracy of memory recall is not too different and is generally more accurate for central details than peripheral details. However, the ability to give a coherent narrative of events improves with age. Over the course of adolescent development a narrative will become more temporally, thematically and causally coherent.

## XII.3 Additional factors influencing the child

### 1. Trauma and post-traumatic stress disorder

#### EXERCISE XII.b

Check Chapter V and VI, and define the following terms:

- ✓ Post-traumatic stress disorder: ...
- ✓ Dissociation: ...
- ✓ Overgeneral memory
- ✓ General memories: ...

Mental health problems are high in asylum-seeking children. In fact, post-traumatic stress disorder had been found to be about **ten times higher in asylum-seeking children than**

**in their non-asylum seeking peers.**<sup>13</sup> As we have seen in Chapter VI, the actual impact of traumatic experiences can be influenced by the nature of the traumatic event, the victim's personal characteristics and their sensitivity. The symptoms may also vary significantly. Given their general vulnerability, children are usually among those most at risk of developing post-traumatic symptoms. Particular factors that make children more vulnerable to post-traumatic symptoms are:<sup>14</sup>

- ✓ Feeling their life was threatened;
- ✓ Poor family functioning (such as not having support from parents);
- ✓ Being socially isolated.

To put it simply: an adult (with a fully developed body and personality) may often be better equipped to cope with traumatising situations or uprootedness than a child who is particularly vulnerable due to their reliance on others to ensure a safe and stable environment.

Traumatic experiences can be distinguished according to whether they represent a single, often sudden distressing experience (such as witnessing a bomb exploding) or exposure to repeated distressing experiences (for example experiencing ongoing abuse or being raped repeatedly over a number of days). Both types of traumatic experience can affect a person's memory, emotional state and ability to trust, but **being exposed to repeated trauma is particularly damaging**. It is also more likely to lead to the child having episodes of **dissociation**. Dissociation is described as disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment.<sup>15</sup> As already presented in Chapter VI, dissociation leaves someone feeling emotionally numb and cut-off, which can affect their presentation in an asylum interview. For example they might avoid talking about certain things, due to feeling afraid that it will trigger a dissociative state or they might dissociate in the interview and appear emotionally cut-off or just unresponsive to the questions asked.

**Children are particularly prone to dissociation**, particularly if they have been exposed to repeated traumas or felt helpless to escape from a trauma. It is important to keep vigilant for this in an interview, for example, if a child becomes silent, withdrawn or no longer answers the questions. They may have dissociated and will need time to be brought back to the present and be able to focus on the questions being asked. PTSD, like other mental health problems, **can also affect autobiographical memory**. This effect is often called **"overgeneral" memory** and is a way of remembering which has limited detail, is filled with broad generalisations and is not specific. For example, to access a memory you have to search through memories with different themes, lifetime periods, or categories of general events before you can get to a specific event. However, people who have overgeneral memories may not be able to find the specific memory. This is important to asylum procedures because the detail of an applicant's account might be viewed as an indicator of their credibility.

Depression and/or being exposed to traumatic events at an early age, such as abuse or neglect, has also been linked with overgeneral memory. For example, repeated trauma from a young age has **negative effects on general development of memory**. If the exposure to trauma events is still continuing, the adolescent's memories will also be more limited. One psychological study compared the memories of adolescents (from Serbia and Bosnia-Herzegovina) who were

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<sup>13</sup> Mina Fazel, Jeremy Wheeler and John Danesh, "Prevalence of serious mental disorder in 7000 refugees resettled in Western countries: A systematic review", *The Lancet*, 365 (2005), 1309–1314

<sup>14</sup> D. Trickey, A. Siddaway, R. Meiser-Stedman, L. Serpell, & A. Field, "A meta-analysis of risk factors for post-traumatic stress disorder in children and adolescents", *Clinical Psychology Review*, 32, (2012), 122–138

<sup>15</sup> American Psychiatric Association, *Diagnostic and statistical manual of mental disorders*, 5<sup>th</sup> edition, Washington, 2013

exposed to war and those who were not (from Norway) and found that those who had been exposed to war could provide far less specific memories.<sup>16</sup>

However, the opposite effect has also been reported with regard to traumatic memories. Some research has found that children who have experienced trauma may, in some cases, report very vivid and detailed memories. It is possible that this is due to the fact that central details of the memory are being recalled, in which accuracy and detail may be heightened in stressful situations.

This apparent difference in the impact of trauma and stress may mean **there are uneven memory patterns amongst traumatised adolescents** – although to be certain more research is needed.<sup>17</sup> If the traumatic event occurred recently (for example in the past two months) adolescents might still be making sense of what happened and are likely to give a good description of events but offer less emotional and sensory information on the event. This might **make the story sound “flat”** or the applicant may appear emotionally cut off.<sup>18</sup>

Although researchers are still investigating how depression and traumatic experiences affect adolescents’ memory, it seems **that they are more likely to give an overgeneral account of their experiences than those who are not depressed or traumatised**. This may lead to the story lacking detail or emotional content.

## 2. Other mental health problems, depression

### QUESTIONS FOR REFLECTION...

Try to recall how you felt when you lost someone dear to you during your childhood/adolescence (e.g. a relative or a pet). How did you feel when you heard the sad news? And afterwards?

Try also to recall any experience of moving house, city or country in your childhood/adolescence, or changing school. How did you feel after the change? How much time did you need to get used to the new environment?

Can you recall any change in your mood, in your ability to focus your attention or in your memory functions? Did you feel sad and hopeless? Were you more likely to forget things? Were you more likely to just focus on your “loss” and disregarding anything else?

**Uprootedness** can lead to seriously negative psychological consequences in all human beings, even when persecutory experiences are not present. Children, again, may be even more exposed to these consequences than adults, given their particular vulnerability and the strong attachment to the protective environment of their family and home.<sup>19</sup> It is not surprising then that besides PTSD, asylum-seeking children often suffer from other common mental health problems too, including **depression, anxiety, grief, sleep disturbance as well as aggression, suicidal tendencies, and psychosis**. Unfortunately because of lack of access to

<sup>16</sup> Tim Brennen, Mevludin Hasanović, Marija Zotovič, Ines Blix et al., “Trauma exposure in childhood impairs the ability to recall specific autobiographical memories in late adolescence”, *Journal of Traumatic Stress*, 23(2), 2010, 240–247

<sup>17</sup> Remember that trauma and PTSD have diverging and highly person-specific symptoms and impact on memory (see Chapter VI.1 in Volume 1)

<sup>18</sup> R. O’Kearney, J. Speyer and J. Kenardy, “Children’s narrative memory for accidents and their post-traumatic distress”, *Applied Cognitive Psychology*, 21(7), November 2007, 821–838

<sup>19</sup> See more about disrupted attachment in the next section

proper healthcare and fear of disclosure these difficulties might not be diagnosed (or at least not on time) in the asylum applicants. All these mental health problems can affect behaviour and memory. Here are some examples:

	CONCRETE MANIFESTATIONS	IMPACT ON CREDIBILITY ASSESSMENT
Depression	<ul style="list-style-type: none"> <li>▪ Difficulty in concentrating;</li> <li>▪ Sleep disturbances;</li> <li>▪ Low self-esteem;</li> <li>▪ Strong feelings of guilt.</li> </ul>	Concentration problems and low motivation may make them more withdrawn and poorer at communication, which can be interpreted as a lack of cooperation and a negative credibility indicator.
Anxiety	<ul style="list-style-type: none"> <li>▪ Restlessness, hyperactivity, constant moving of body and sight;</li> <li>▪ Constant feeling of “being on edge”;</li> <li>▪ Avoiding topics that increase worry.</li> </ul>	Nervous behaviour and shifting eyes around the room (lack of eye contact) may be interpreted as a sign of lying. Psychologists also found that if someone is anxious she/he is more likely to change her/his answers in an interview situation.
Aggression <sup>20</sup>	<ul style="list-style-type: none"> <li>▪ Antisocial behaviour;</li> <li>▪ Insults, intimidating verbal communication and demeanour;</li> <li>▪ Physical violence.</li> </ul>	Such behaviour may easily be perceived as a lack of cooperation, and as such a negative credibility indicator. It may also distract the interview from the relevant topics and reduce the interviewer’s ability to empathetically listen to the child.

Problems which have been present since birth, such as autistic spectrum disorder or learning difficulties, or a more recently acquired brain injury may also be present. These may affect how much the child understands about what is required of them and their ability to adjust to the demands placed upon them by the asylum system.

### 3. Fear, lack of trust, attachment disruptions

#### EXERCISE XII.c

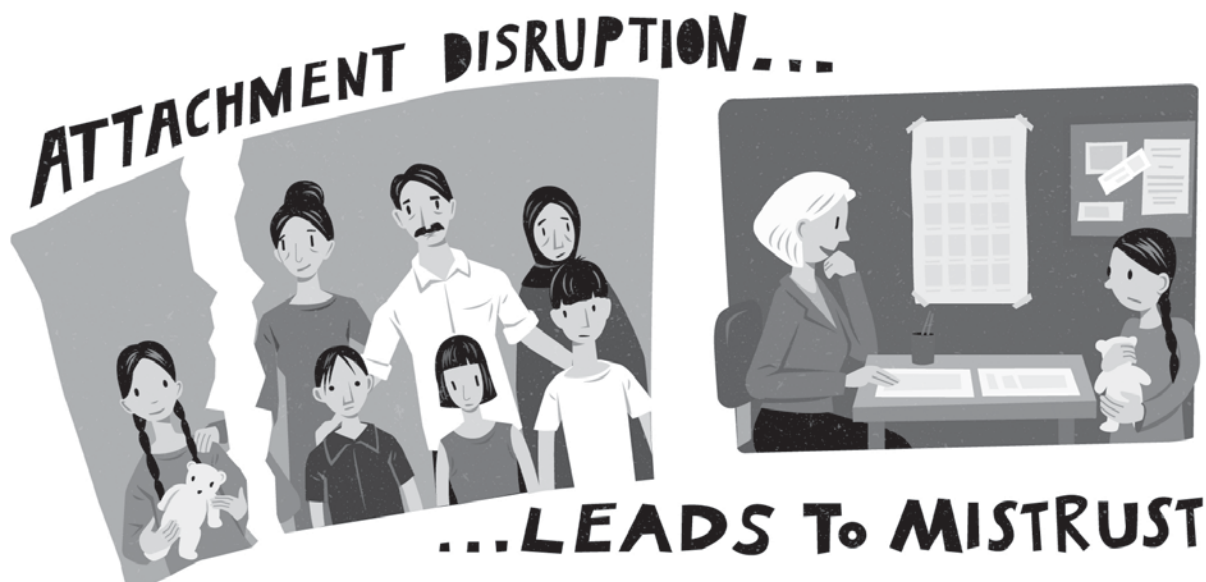
Without a certain level of trust, it is impossible to talk about distressing/negative personal experiences. Asylum-seeking children (especially unaccompanied minors) often have limited trust in the person interviewing them in an asylum context. Which factors or experiences may lead to reduced trust in children? Write a list:

- ✓ Factors/experiences from before the flight: ...
- ✓ Factors/experiences during flight: ...
- ✓ Factors/experiences in the host country: ...

Which of these factors are specific to children and which are not?

Trust is particularly important to consider when interviewing children as without it they are **likely to become anxious and withdrawn**, failing to disclose the full account of their experiences. The child may have had their trust undermined already due to early separation from their parents or caregivers, who are the very people who first teach a child trust. This strong bond between a child and its parent shapes how the child relates to and trusts other people, as well as helping them learn to understand and manage their own emotions. This early relationship has a long-

<sup>20</sup> This is particularly common among children who were exposed to war or forced to engage in violence (e.g. child soldiers).



lasting effect and **early separation can really affect how the child relates to other people**. In the context of an interview, such attachment disruption may mean they not be able to see the interviewer as someone they can trust or disclose to.

Many asylum-seeking children may have lost trust in authorities because they have been exploited by smugglers, witnessed authorities who abuse power, or were abused themselves. This might make it even harder for them to overcome this distrust and view authorities in the current country differently.

As an interviewer or authority figure, taking a kind and disarming approach may help, but it is important to be aware that trust may not be easily built up in one meeting. Allowing the child **more time** to feel comfortable and begin to disclose their experiences is important. They may also find it easier to disclose if they have **a trusted person present** with them in the interview.

#### 4. Shame

Another barrier to disclosure is **shame**. Shame is an emotion which is linked with **feeling exposed to other people as inadequate or inferior and being negatively judged** because of it. If a previous experience is associated with feelings of shame or embarrassment, a child will give less information when asked to recall the event. This reluctance to disclose information also affects an interviewer, who, in such situations, is more likely to make fewer requests for information or to start making more unsupportive comments.

This interaction between the child and the interviewer has been found in past research to reduce the amount of information elicited. For example, a child reluctant to disclose details of abuse has led to investigators asking questions repeatedly or asking leading questions to try and get information in an interview. However this is unlikely to get the information required or may even lead to inaccurate information being disclosed by the child. This is because the child **may perceive repetition of a question as an indication that the first answer they provided was wrong so they change their answer**.<sup>21</sup> Or if asked a leading question they may try to satisfy the adult with an answer they think the adult wants to hear. Because of these issues, taking a sensitive approach is important. If a child does not appear to be forthcoming with information try to avoid repeating the same questions or asking leading questions. Instead

<sup>21</sup> See also Chapter V.6, section 7





it may be helpful to comment that they do not seem to be able to answer that question and ask why that is. They might also need a break if the questions are raising difficult memories. Returning to the same question later in a different context, from a different point of view, or in a different style may also be helpful.

Children may also feel a strong **need to protect members of their family** or other important relationships which might influence what they disclose in an interview. For example, asylum-seeking children may believe that telling their story will bring shame on their family. This may be particularly true in children who come from more collectivist, interdependent cultures, who report feeling a greater sense of duty to assist and respect their family.<sup>22</sup> There may be a lot of pressure placed on that child to be “successful” in a new country and gain protection. Because of this they may have been encouraged to tell certain parts of their story, or tell their story in a certain way which inhibits the disclosure of other aspects of their experiences. This pressure to “get their story right” may be an additional

burden which also affects the way they tell their story. Children are **even more exposed to this risk than adults**, given their inferior position in the power structure of the family, the fact that very often the decision about their migration is not taken by them but by their family, etc.

A number of additional factors might affect the child’s account during their asylum interview.

Mental health problems can influence what they recall and how they tell their story (i.e. less detail, dissociated, more emotionally disconnected) and may leave them appearing less credible.

Early disruption from attachment figures, such as parents, or exposure to interpersonal trauma may affect their ability to trust others which may make it harder for a child to disclose important information at the asylum interview.

Shame about what a child has done or experienced or their sense of duty to their family may shape what they feel willing to disclose at an asylum interview.



<sup>22</sup> Andrew J. Fuligni, Vivian Tseng and May Lann, “Attitudes toward family obligations among American adolescents with Asian, Latin American, and European backgrounds”, *Child Development*, 70/4 (1999), 1030–1044

## XII.4 Decision-makers and child-specific issues

In the previous sub-chapter we have learnt about how the individual and contextual circumstances of a child applicant can affect the interview and the information disclosed. But as we saw in Chapters IV and VIII, it is not only the asylum-seeker whose circumstances or characteristics count: **interviewers and decision-makers are equally important** in this respect.

### 1. Decision-making and biases

#### EXERCISE XII.d

Write a list about the main factors that influence asylum interviewers/decision-makers in the credibility assessment process, based on Chapter VIII. Now try to identify which of these factors may function differently (e.g. be particularly important or have a different impact) in case of assessing the credibility of child asylum-seekers. Are there significant differences?

Just as the child applicant's development, state of mind and individual circumstances affect the interview, so too can the decision-makers'. Many of these issues are briefly introduced in Chapter VIII. This section explores some of the **specific ways working with children can affect the decisions made**.

A review of judges assessing adult asylum claims in the UK found that their decisions were often based on assumptions about human behaviour, intentions, ways of remembering and relating to experiences that are not supported (or even contradicted) by scientific research.<sup>23</sup> While no similar study has been done on judges' decisions in asylum cases of children, research in other areas helps us understand what some of the difficulties might be for decisions made about children.

Psychologists suggest we have **two systems through which we make decisions**:

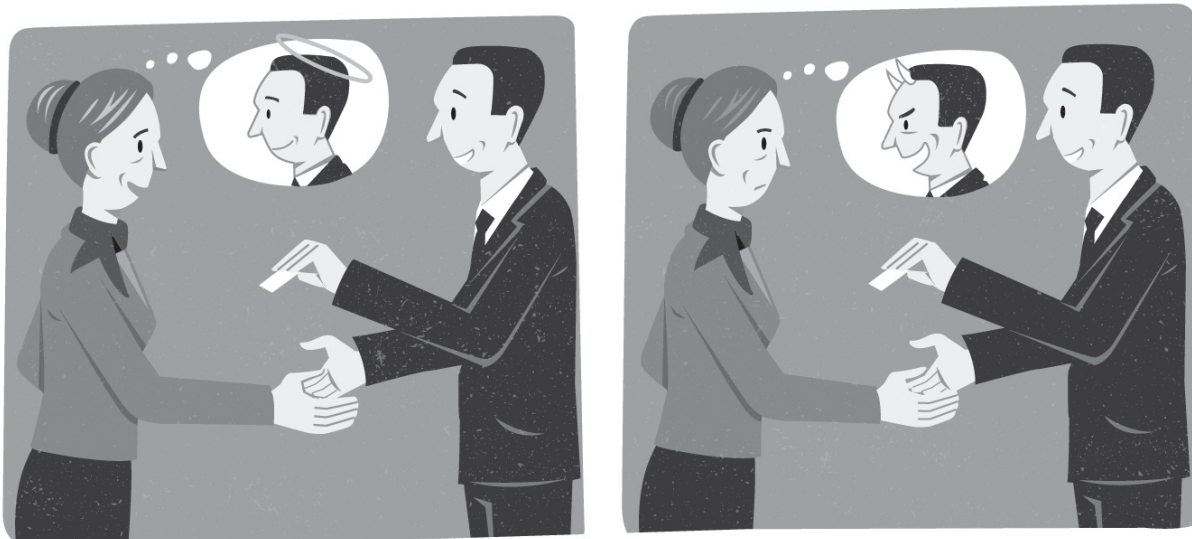
- ✓ one is active, mindful and involves the consideration of various factors and alternatives, demanding a lot of **mental processing**;
- ✓ the other one is much quicker, often unconscious and does not demand a lot of mental processing.

As we are faced with **many decisions every day** it is only natural that we create these fast tracks to decision-making. To use this fast-track, spontaneous decision-making system, we rely on **previous experiences and our own biases** (see examples in box below). While this is completely natural, it can become a problem if we use these strategies when making a complex decision, for example, about a child's asylum claim, as we may fail to fully consider all the facts.

<sup>23</sup> Jane Herlihy, Kate Gleeson, Stuart Turner, "What assumptions about human behaviour underlie asylum judgements?", *International Journal of Refugee Law*, 22(3), 2010, 351–366

	DESCRIPTION	EXAMPLE
BELIEF BIAS	Our pre-existing beliefs influence how we reason. If the impression we get does not fit our expectations, assumptions or stereotypes, we may also be less likely to ask follow-up questions to disprove our own beliefs. <sup>24</sup>	"I believe that smugglers are criminals and they are not trustworthy, so I find it difficult to believe that a child would trust a smuggler in such a way."
HALO EFFECT <sup>25</sup>	First impressions (how the person looks, what she/he says at the first encounter, etc.) influence all subsequent information. An interviewer might seek to confirm their initial impression and discount sound information which contradicts this impression.	"The child said something really implausible in the beginning of the interview. After that I had a hard time believing anything he said."

## THE HALO EFFECT



The distance (i.e. cultural, linguistic, economic, social, gender, etc.) between the asylum-seeker and the officer or judge performing credibility assessment is inherently large in most asylum cases, making these cases fairly different from many other administrative or judicial processes.<sup>26</sup> Such distance between two people also influences how well someone is able to make judgements about their credibility. For example, **being closer in age or ethnicity will make the decision-maker feel more competent in judging whether applicant appears truthful.**<sup>27</sup> Given that asylum-seeking children **will be distant from the interviewer and decision-maker at least by age** (and very possibly ethnicity, language, etc.) it is likely the decision-maker will be less competent and even more influenced by assumptions and biases in assessing the child's credibility, as compared to the same exercise with an adult asylum-seeker. This may also mean they are more likely to fall back on other thinking biases (like those in box above) to try and draw some conclusions. It is also important that this inevitable distance cannot be reduced by appointing an interviewer or decision-maker "similar to the applicant", i.e. another child (as may

<sup>24</sup> See also section 6 in Chapter VII.2 on stereotypes and prejudices in a cultural context

<sup>25</sup> A name given by psychologist Edward Thorndike, referring to a "halo" (or glory), a ring of light that surrounds a person considered saint or sacred in various religions. The opposite phenomenon is often called the "devil effect" or the reverse halo effect

<sup>26</sup> See Chapter I.1 in Volume 1

<sup>27</sup> Bella M. de Paulo, Kelly Charlton, Harris Cooper, James J. Lindsay and Laura Muhlenbruck, "The accuracy-confidence correlation in the detection of deception", *Personality and Social Psychology Review*, 1, 1997, 346-357

happen in gender-related cases, where selecting an interviewer of the same, or sometimes the opposite, sex can be very useful<sup>28</sup>).

Judgements about truthfulness are also problematic because humans are only slightly better at determining a lie than if the decision was made by flipping a coin. This has been shown to be particularly true with children, even in professionals who work with children such as teachers or police.<sup>29</sup>

Age difference usually comes with an **inevitably unequal power relationship** as well. This factor increases the already existing power distance between the interviewer/decision-maker and the asylum-seeker who usually feels inferior in this context (just think about how you would feel in such a situation where your entire fate depended on the person sitting in front of you). Some factors may further strengthen this phenomenon:

- ✓ If the applicant comes from a cultural context characterised by **large power distances** (e.g. children are subordinates of their parents or family, rather than individuals with their own will);<sup>30</sup>
- ✓ In a **judicial setting**, where the venue (courtroom), clothes, communication style, etc. usually emphasise an important power difference.

### QUESTIONS FOR REFLECTION...

“I really can’t understand how my teenage son has become like he is now. He used to be such a good child, we gave him everything and we got along quite well until he turned 13. Now he is performing badly at school, lies to us and I even caught him smoking last week. If only I could understand what we did wrong...”

“My 16-year-old daughter spends all her time talking with her friends on the phone and the internet, sometimes several hours a day! How can they have SO much to talk and laugh about? I try to do my best to understand her, always ask about what’s going on at school, with boys, etc. but to me she does not tell anything. I wish I could see what is happening in her head...”

“When I was a teenager, I often felt lonely. I thought that nobody understands me, not even my family or classmates. Besides my best friend I had no one else to talk to. Now I understand that my parents only wanted the best for me, but back then I was furious whenever they tried to give me advice or intervene in my life.”

Quite common sentences, right? Have you ever been in such a situation? Being an adult, it may be very difficult to understand why children or adolescents behave in a certain way, even when we try very hard, there is a strong personal-emotional tie, and no great cultural, social, etc. distance is involved. The hardship of empathetically understanding asylum-seeking children is far greater, but thinking about your own personal experiences may help you.

<sup>28</sup> See sub-section 2 in Chapter X.2

<sup>29</sup> A. Vrij, L. Akehurst, L. Brown, S. Mann, “Detecting Lies in Young Children, Adolescents and Adults”, *Applied Cognitive Psychology*, 20: 1225–1237 (2006)

<sup>30</sup> See section 5 of Chapter VII.2



## 2. Assumptions about credibility and deception among children

As we learnt in the beginning of this chapter, there are many different cultural views on what childhood is and on the motivations and capabilities of children. This is also different depending on the person and her/his own experiences. For example, **adults who are older and have more exposure to children are found to be more sensitive to children and less prone to biases in how they think about children.**<sup>31</sup>

### EXERCISE XII.e

Fill the gaps with “more” or “less” in the following sentences. Don’t think too much, just write down what first comes to your mind:

- ✓ Children are usually ... sincere than adults.
- ✓ Adolescents are usually ... sincere than younger children.
- ✓ Adolescents are usually ... trustworthy than adults.
- ✓ Adults are usually ... manipulative than adolescents.
- ✓ Younger children are usually ... responsible than adolescents.

The **age of the child** also seems to shape how adults view them. Traditionally in law a child was not allowed to provide their testimony as they were thought to have limited capacity to observe, recall and communicate evidence. This has changed over time, but many still seem to view children as less able than adults in this respect. When comparing children to adolescents, it seems that **adolescents are thought to be less credible but more responsible than children, and often considered to be manipulative.**<sup>32</sup> However another study of judges in Canada found that they believed adolescents were less trustworthy than children, but more trustworthy than adults and that they were more likely to make mistakes because of their less developed memory and communication.<sup>33</sup> If you managed to quickly complete the above short exercise, it means that you also have strong presumptions regarding these questions.

All of these assumptions about children and adolescents are important because they may shape the way a decision-maker interprets the information a child provides them. If a decision-maker believes children are not capable of remembering accurately they may think a child is lying if they give a consistent description of previous events. Or if a decision-maker thinks that children should be just as clear about the order of events as adults and believe adolescents lie more they may mistrust an account in which the applicant changes the order of events.

The decision-maker or interviewer might also have **assumptions** about what the child ought to know about the asylum procedure. If it is assumed that the child *should* know how the system works, they may not take time to explain what is required of them. Equally if it is thought that the child will be powerless and not understand much, a well-informed child who understands the system may be viewed with suspicion. This would indicate that **it is important to take time at the beginning of the interview to learn what the child understands about the asylum system** and explain their role clearly. It may even be helpful to get them to explain it back to you.

<sup>31</sup> Stephanie D. Block, Donna Shestowsky, Daisy A. Segovia, Gail S. Goodman et al., “‘That Never Happened’: Adults’ discernment of children’s true and false memory reports”, *Law and Human Behavior*, 36/5 (2012), 365–374

<sup>32</sup> Sarah A. Font, “Perceptions of juvenile sexual abuse victims: A meta-analysis on vignette-based studies on the effects of victims’ age and respondents’ gender”, *Journal of Child Sexual Abuse*, 22/5 (2013), 593–611

<sup>33</sup> Nicholas Bala, Karuna Ramakrishnan, Roderick Lindsay and Kang Lee, “Judicial assessment of credibility of child witnesses”, *Alberta Law Review*, 42/4 (2005), 995–1017



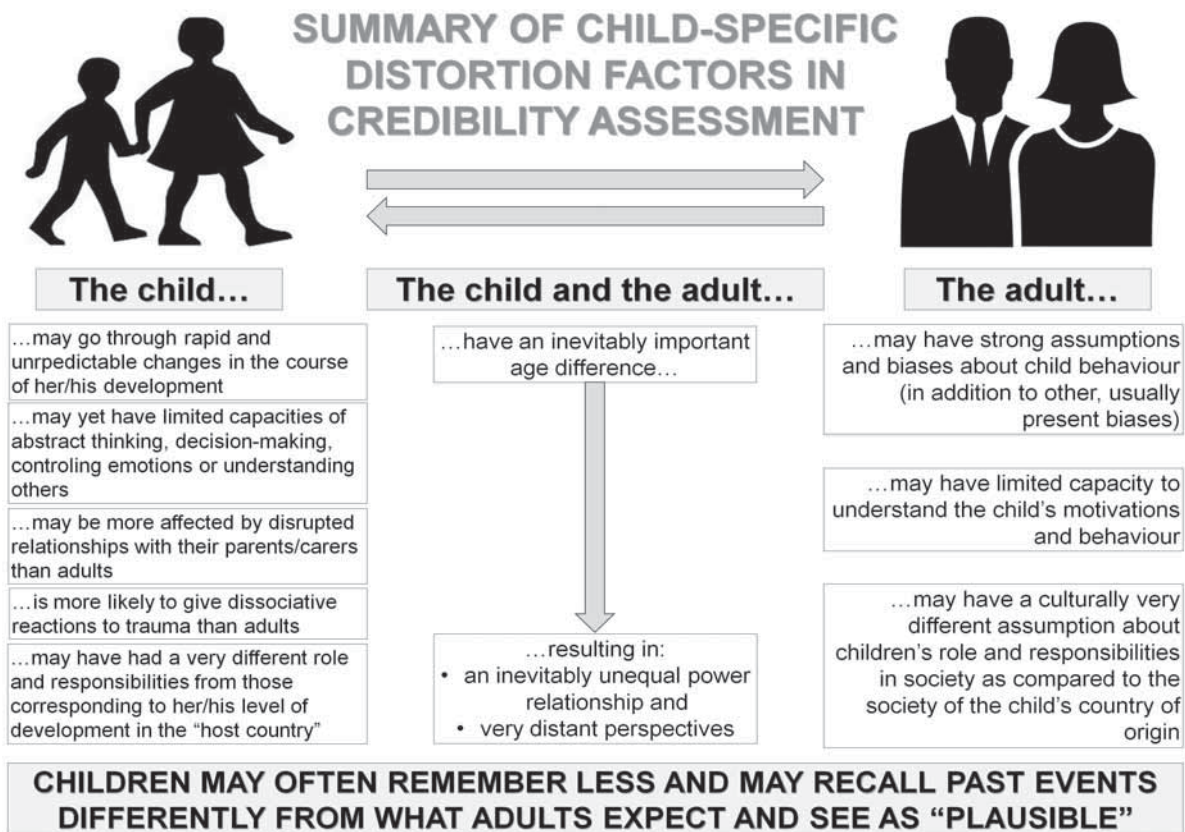


A decision-maker's personal and contextual circumstances might shape what she/he asks or thinks about a child (as in the case of adults). As compared to adults, decision-makers may have additional biases, stereotypes and assumptions about how children or adolescents are, how they are "supposed to behave", etc.

Due to the inevitable age difference, decision-makers may find it even more difficult to empathetically understand the motivation behind a child's reaction or behaviour. The inevitable power difference between an officer and an asylum-seeker (which usually affects or distorts disclosure and communication) tends to be even stronger if the applicant is a child.

## XII.5 Using credibility indicators with children

As we have seen, when applying credibility indicators<sup>34</sup> in the asylum framework, many of the typical challenges decision-makers will face are similar to those that come up in adults' cases.<sup>35</sup> However, there are also a number of child-specific aspects which require particular attention and preparedness. The following summary gives a non-exhaustive overview of the main child-specific aspects that need to be considered:



<sup>34</sup> See Chapter II.5

<sup>35</sup> See the general framework for distortion factors in Chapter IV

In the following we will see how all this impacts on the use of credibility indicators and how distortions can be reduced.

## 1. Sufficiency of detail and specificity

Many hold the assumption that a credible account will be sufficiently detailed, neat and told in a linear way (from start to finish). While in light of scientific research this presumption may already be problematic in case of adults,<sup>36</sup> we have also seen that children find this even more challenging than adults due to less developed proficiency in recounting their memories and developmental differences. **A child's ability to give sufficient detail will be shaped by the interaction between their individual circumstances such as developmental stage, levels of distress and the interviewer's questions.**

### QUESTIONS FOR REFLECTION...

Do you ride a bicycle? Think back to when you first tried. Although you had all the skills you needed, were you able to ride it? It probably took you time to coordinate yourself and the actions needed. This is a bit like an adolescent telling their story – possibly for the first or second time. They may find it more difficult to coordinate themselves and remember to provide all aspects of the story.

The regions of the brain responsible for language and social and emotional understanding are still developing, so they may be **less likely to recognise what level of detail is required** to substantiate an asylum claim. Because of these limitations a child **may need more instruction** on what the interviewer requires from them and more time to tell their story.

A child's ability to provide a coherent and detailed narrative is also still developing. For example, psychological research has found that while **adolescents are as accurate as adults in their accounts of memories, they provide less detailed information (i.e. less likely to report the physical features of a person).**<sup>37</sup>

**Differences in the culture** of the child applicant and the interviewer might also affect the detail of their account. As we learnt, culture can shape the way we remember and the level of detail we recall. with interdependent cultures generally giving less individual detail about previous experiences than individualistic cultures. The interviewer's expectations of a sufficient level of detail about an event may be very different to that of the applicant. In certain cultures **children are not expected to talk too much** in front of adults and/or are never asked about their opinion, feelings, etc. Again, this may seriously reduce the level of detail provided in the child's account.

Other issues which may reduce the level of detail provided may be to do with the child's **emotional state**. As we learnt, depression and post-traumatic stress disorder are common among child asylum-seekers. Both of these conditions can reduce the amount of detail available of memories, which would have an impact on the way they tell their story in an asylum interview. The child may also find it so distressing to talk about these events that they avoid talking about them, and

<sup>36</sup> See Chapter V in Volume 1

<sup>37</sup> Joanna D. Pozzulo and Kelly L. Warren, "Descriptions and identification of strangers by youth and adult eyewitnesses", *Journal of Applied Psychology*, 88(2), 2003, 315–323

may not realise how important they are to their claim. Lack of trust and shame may also leave the child reluctant to disclose parts of their story.

An interviewer's emotional tone, style and questions can all have a strong influence on the quality and detail of the information they draw out, especially given the unequal power relationship between the child applicant and the adult interviewer/decision-maker.

As the UNHCR Guidelines on Child Asylum Claims summarises,

**Children cannot be expected to provide adult-like accounts of their experiences.** *They may have difficulty articulating their fear for a range of reasons, including trauma, parental instructions, lack of education, fear of State authorities or persons in positions of power, use of ready-made testimony by smugglers, or fear of reprisals. They may be too young or immature to be able to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult. Some children may omit or distort vital information or be unable to differentiate the imagined from reality. They also may experience difficulty relating to **abstract notions, such as time or distance**. Thus, what might constitute a lie in the case of an adult might not necessarily be a lie in the case of a child. It is, therefore, essential that examiners have the necessary training and skills to be able to evaluate accurately the reliability and significance of the child's account. This may require involving experts in interviewing children outside a formal setting or observing children and communicating with them in an environment where they feel safe, for example, in a reception centre.*<sup>38</sup>

## 2. Internal consistency

Whilst children are generally about as accurate as adults in recalling events once they have reached adolescence, there are a number of reasons why using internal consistency as an indicator of credibility is problematic. Research suggests that internal consistency is often a problematic indicator of credibility in any age group and that it may say more about the interviewing technique than it does about the applicant.

As we have learnt in Chapter V, **memories are reconstructed over time and with each retelling**. This means that stories are vulnerable to change – particularly when someone is asked different questions or retells the account in a different mood state. This happens in any retelling of a previous memory, however in interviews this can have an even greater effect. **“Interrogative suggestibility”** describes the tendency for someone to change their account following from a sense of interpersonal pressure or being presented with misleading information in an interview.

This might be created by the interviewer asking leading questions or giving negative feedback, both which convey a message about what the interviewer would like to hear. In fact this effect can be so powerful that studies in the past have managed to plant a completely false memory into someone's mind – just through questioning.<sup>39</sup>

This suggestibility effect is even higher when the person is young, has a poorer memory, has lower intelligence or is in a position of less power, as all these things lead to them being more easily influenced by the interviewer. Generally people are more susceptible to suggestibility effects on peripheral aspects of their memories compared to central ones. This would fit with

<sup>38</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, Para. 72 – emphases added, footnotes omitted

<sup>39</sup> Elizabeth Loftus, “Memories of things unseen”, *Current Directions in Psychological Science*, 13(4), 2004, 145–147 and more examples in sub-sections 5–7 of Chapter V.6 in Volume 1 of this manual

the idea that the less certain someone is about aspects of a memory the more they are likely to change their answers.<sup>40</sup> This does not however indicate that the account is not true.

Consider what we just learnt about asylum-seeking children: they are definitely younger than the interviewers, their brain and neurological system is still developing, and they often have memory impairments due to mental health problems or effects of trauma. Consequently, **children are likely to be particularly suggestible and alter their responses** in an interview if asked leading questions or given negative feedback (such as repeated questions).

Information introduced at a later date or in a follow-up interview can be viewed as a sign of inconsistency and therefore undermine credibility. However, as we have learnt, **barriers to disclosure** such as lack of trust (resulting from disrupted attachment or other factors) and shame may be partly responsible for a child who is not forthcoming with some material information, which they may later realise is important to tell. **Developmental differences** also need to be thought about. For example memory studies have shown us that **as adolescents develop new skills and ways of thinking, they review the meaning of their previous memories**. And so they may alter their understanding of a previous experiences and how they describe it.

Furthermore, given the influence different interviewing styles can have on the information elicited, if these interviews were done by different people or even using different techniques this might explain inconsistency between two accounts. Here are some (non-exhaustive) hints for a successful interview:

DO	DON'T
<ul style="list-style-type: none"> <li>▪ Try to understand before or in the beginning of the interview at what stage of development the child is and what "role" she/he was required to perform in the country of origin, and ask questions/expect information accordingly</li> <li>▪ Remain neutral</li> <li>▪ Provide supportive comments</li> <li>▪ Ensure your questions are interpreted appropriately, in a way that a child can also understand them</li> <li>▪ Allow the child enough time to construct her/his response (think about bicycle-riding!)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Don't ask leading questions and be aware that a question may be "leading" for a child even when an adult would not find it so</li> <li>▪ Don't ask complex questions (double negatives, age inappropriate questions, etc.)</li> <li>▪ Avoid intimidating comments, don't emphasise your power in the relationship</li> <li>▪ Don't be too patronising, as this may also be disturbing for a child who is not used to this</li> <li>▪ Don't ask the same question several times – if you don't get to the answer you are looking for ask it differently and later</li> </ul>

### 3. Consistency with information provided by others and external information

In assessing the usefulness of comparing two people's accounts of an event it is important to return to what we know about memory development. While you may expect there to be some overlap in what they both describe, much of the detail may vary. **What is a central aspect of the experience for an adult may not be for a child and the other way round**. This is likely to lead to the detail being less well remembered and therefore differently reported. Memory studies also suggest that recall of a direct experience will be more accurate than memory of something observed.<sup>41</sup> Furthermore, the developmental stage of the person may shape the aspects of an experience which are remembered and how they are interpreted. For example, the meaning a child

<sup>40</sup> Maggie Bruck and Stephen J. Ceci, "The suggestibility of children's memory", Annual Review of Psychology, 50 (1999), 419–439

<sup>41</sup> Andrea Follmer Greenhoot, Laura McCloskey and Elizabeth Glisk, "A Longitudinal Study of Adolescents' Recollections of Family Violence", Applied Cognitive Psychology, (2005) Sep, 19(6), 719–743



might make of witnessing abuse may be different to that of an adult. So if a child's account is being compared to that of an adult they may well have very differing views. If two accounts are compared, beliefs held by the interviewer or decision-maker about children (such as they are more likely to lie, or they are less capable of remembering) will influence whose account is given precedence.

Also, children very often have **different access to information** than adults, and may therefore lack information on otherwise material issues (such their parents' political activity, religious conviction, etc.).

Country information may also need to be used cautiously as a means of testing credibility. An applicant's credibility may be tested by assessing their knowledge on information about their home country such as denomination of currency, famous landmarks. However the developmental stage of the child or the level of education they have received may mean that they do not know this information. For example a child who had little education and never did shopping for their family may not have good knowledge of the currency in their home country.

Don't forget that **country information is produced by adults** and therefore it may **ignore or overlook the experience of children** in the given context.

These differences, based on **different roles in society and its power structure**, are comparable to those related to gender, as already presented in detail in Chapter X.3.

*The child's individual and contextual circumstances, such as her/his developmental stage and personal capacity should be carefully considered when using "common" credibility indicators.*

- ✓ *Sufficiency of detail and specificity: Children typically tell their stories with less detail than adults do. Although they may be able to give the detail, they will need more support to describe it. Children may also have a very different focus and different interests than adults, which will affect the elements on which they are able to provide the most details.*
- ✓ *Internal consistency is generally of limited value as a credibility indicator in children. In addition to all the general memory distortions that lead to natural inconsistencies, children are often specifically affected by interrogative suggestibility, by the distorting impact of the lack of trust and the developmental changes of memory (especially in adolescents).*
- ✓ *External consistency: A child's statements should be very carefully compared to country information or the testimony of adults. Children are often not aware of certain important information about their country, community, etc. due to limited education, lack of specific interest or developmental stage.*





## IMPROVING CHILD-SPECIFIC COMPETENCES FOR CREDIBILITY ASSESSMENT

### Knowledge

Learn more about child development, including the development of memory and communication;

Read and understand the UNHCR Guidelines on Child Asylum Claims;

Learn about the role of children (with due attention to gender differences) in the societies unaccompanied minor asylum-seekers come from;

Learn about alternative communication methods that can be used at children's asylum interviews (drawing, role plays, etc.), including their advantages and risks;

### Skills

Develop child-friendly interviewing methods (for example how questions should be asked) and learn to apply them in practice;

Practise alternative communication methods; learn how to consider cultural differences when selecting the communication method applied;

Learn how to build trust with attention to attachment disruption problems;

### Attitudes

Understand and accept the great variety of the roles children play in different societies and individual contexts, understand that

Be aware of your own stereotypes, assumptions and expectations with regard to children, and learn how to limit their impact on your communication and the decision-making process;

Recall the main stages of your development as a child and adolescent, it will help you understand the complexity of this process.



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- Shelah S. Bloom, *Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators*, USAID, 2008
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- Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe, 2011
- Heaven Crawley, *Refugees and Gender: law and process*, Jordans, Bristol, 2001
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