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THE HEART OF THE MATTER

Assessing Credibility when Children Apply for
Asylum in the European Union



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CHAPTER 1

Introduction

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1. Purpose and Scope of the Report

A positive credibility finding is a prerequisite for being recognized as a refugee, whether the applicant is an adult or a child.¹ Nevertheless, how the credibility of children's claims is assessed has rarely been studied, and international and domestic legal frameworks provide little guidance on this subject. Research in other areas of law suggests that assessing children's credibility is especially difficult. This is because their memories are less developed than those of adults, they are more suggestible than adults, and they do not have the same communication skills.²

Credibility assessment is of course not an exact science. It involves judging whether an individual is being deliberately deceptive, is simply mistaken about some of the information he or she conveys, or is unable to provide the necessary information.

In the case of asylum-seekers, it is complicated by several factors: most evidence consists of oral statements, independent corroboration of which can rarely be obtained; the applicant and the interviewer (who may or may not also be the decision-maker) usually come from different cultural and linguistic backgrounds; communication almost always takes place through an interpreter; and many asylum-seekers suffer from post-traumatic stress disorders, which can make it hard for them to recall and to convey their past experiences.

In common usage, credibility assessment is understood as “a judgement concerning the quality and veracity of evidence”.³ In the context of asylum decision-making, however, it has a broader meaning. UNHCR understands ‘credibility assessment’ to encompass the first step in the asylum determination process: the gathering of relevant facts from the asylum-seeker, examining these facts in the light of all information available, and deciding if the individual's statements (and any other evidence presented) can be relied upon for the purpose of determining whether the applicant qualifies for international protection.

In May 2013, the Office of the United Nations High Commissioner for Refugees (UNHCR) published a report entitled *Beyond Proof: Credibility Assessment in EU Asylum Systems*.⁴ The impetus for that report was the realization that asylum applications are often denied on the grounds that they are ‘not credible’, yet there is not a common approach to credibility assessment, even within the European Union (EU).

Beyond Proof looked into the practice of credibility assessment in several EU Member States and proposed a set of principles and indicators to underpin the process. It drew particular attention to the importance of a multidisciplinary approach, pointing out that work done in other disciplines, including neurobiology, psychology, anthropology, sociology, and gender studies can provide helpful insights. *Beyond Proof* examined credibility assessment in the context of asylum applications presented by adults. The case of child claimants was left for future research.

¹ In this report, the terms ‘child’ and ‘children’ are used in accordance with the 1989 *Convention on the Rights of the Child* (hereafter CRC), 1577 UNTS 3. See Chapter 2 *infra* for further explanations on terminology. In cases where refugee status is recognized on the basis of the applicant's nationality or ethnicity, the credibility assessment may be limited to these elements.

² N. Bala, K. Ramakrishnan, R. Lindsay and K. Lee, ‘Judicial Assessment of the Credibility of Child Witnesses’, *Alberta Law Review*, vol. 42, 2004–2005, pp. 995–1017, at p. 999.

³ J. M. Brown and E. A. Campbell, *The Cambridge Handbook of Forensic Psychology*, Cambridge: Cambridge University Press, 2010, p. 153.

⁴ UNHCR, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (hereafter, *Beyond Proof*), Brussels, May 2013.



This report takes up that challenge. With significant numbers of unaccompanied children applying for asylum in EU Member States – 12,640 in 2013 and rising numbers in 2014,⁵ assessing the credibility of their claims correctly and consistently is of vital importance.

Researchers and practitioners have devoted surprisingly little attention to techniques for interviewing asylum-seeking children and for assessing their statements. This contrasts with the vast literature on eliciting evidence from children who are witnesses or victims of crime, in particular those who claim to have suffered sexual abuse.⁶ There is also comparatively little jurisprudence at national⁷ and regional⁸ levels on evidentiary standards to be met by state authorities when assessing the asylum applications of children.

The Heart of the Matter aims to help decision-makers assess the credibility of children's claims in a fair, objective and consistent manner. It sets out a number of observations that could serve as the foundation for guidance on the subject. It is hoped that this research will contribute towards strengthening practice in the difficult area of child asylum claims, and towards UNHCR's elaboration of globally applicable Guidelines on Credibility Assessment.

⁵ Source: Eurostat, last updated 12 September 2014. Although statistics for 2014 were unavailable at the time of completion of this report, it was clear that the number of unaccompanied and separated children was on the rise, owing in particular to influxes from Eritrea and Syria.

⁶ A selection of material is included in the Reading List attached to this report.

⁷ Austria appeared to be an exception, as in that country there is a robust body of relevant case law.

⁸ The European Court of Human Rights (ECtHR) has considered many cases involving children and references to the 'best interests' principle contained in Article 3 of the *Convention on the Rights of the Child* can be found in many of its decisions. The court has not devoted the same attention to Article 12 of the CRC (the right of the child to be heard), nor has it addressed evidentiary standards in cases involving the testimony of children. This is true not only in the area of international protection but also in other fields where children's statements are at the heart of circumstances being examined by courts: trafficking, sexual abuse, other forms of abuse and neglect, child custody and care, parental rights, minors in detention and international child abduction, for instance. The court's silence likely reflects a reluctance to substitute its views on the sufficiency of evidence for those of national judges.

2. Methodology

This report is based primarily on research in four European Union Member States where many unaccompanied children apply for international protection – Austria, Italy, the Netherlands, and Sweden. In 2013, these four countries received 47 per cent of asylum applications lodged in the EU by unaccompanied children.⁹ The report makes no claim to be comprehensive, and is qualitative rather than quantitative in nature. For practical reasons, the research concentrated on the assessment of applications lodged by children who were not accompanied by parents or other guardians, usually termed ‘unaccompanied and separated children’ (UASC or, in the interest of brevity in this report, simply ‘unaccompanied children’).¹⁰ Although children who arrive in the EU with their parents or other guardians may – and indeed do – also present applications for protection in their own right, record-keeping arrangements in most countries make it difficult to collect information on such cases.

The research was supported by an interdisciplinary advisory panel of experts in refugee law, child protection, child psychology, and social work. It benefited from the particular expertise of the Centre for the Study of Emotion and Law, which has done ground-breaking research on credibility and memory issues in the asylum context.¹¹

It is not the aim of this research to judge the performance of individual countries, but rather, to report on the practices observed, both good and less good, in an effort to contribute to improving and ensuring consistency in the way credibility is assessed. As a result, where examples are drawn from individual cases, the report does not identify the country concerned.

2.1 Desk-based research

UNHCR reviewed primary and secondary sources from the four countries of focus, including:

- National legislation concerning asylum, with specific attention to provisions relating to credibility assessment and to asylum-seeking children;
- Case law providing guidance on credibility assessment in children’s cases;
- Relevant administrative and operational instructions and policy guidelines;
- Training materials on the examination of children’s asylum claims and on credibility assessment;
- Official statistics on unaccompanied asylum-seeking children; and
- Scholarly articles and research reports.

⁹ Source: Eurostat, last updated 12 September 2014. Eurostat’s 2012 and 2013 statistics for the Netherlands are labelled ‘provisional’. Because extensive research was done in the Netherlands for the *Beyond Proof* report, and owing to limited resources, the scope of research there was narrower than in the other three countries.

¹⁰ UNHCR has opted for the term ‘unaccompanied and separated children’ to reflect the breadth of situations in which children apply for asylum on their own. The UN Committee on the Rights of the Child offers the following definitions: ‘*Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention [on the rights of the child], who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.*’ Separated children are defined as children ‘*who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.*’ UN Committee on the Rights of the Child, *General Comment No. 6 (2005), ‘Treatment of Unaccompanied and Separated Children Outside their Country of Origin’*, 1 September 2005, CRC/GC/2005/6, paras. 7 and 8.

¹¹ The Centre for the Study of Emotion and Law is a charitable research centre with the aim of providing high quality applied research to inform legal decision-making. See: <http://www.csel.org.uk>

In an attempt to identify relevant precedent-setting jurisprudence, the desk research extended beyond the four countries of focus.¹² In many countries, such case law was found to be scarce, reflecting the deference shown by courts to the credibility assessment conducted by the first instance asylum authorities.

In addition, the training materials that the European Asylum Support Office (EASO) developed were reviewed, as were a wide range of scholarly articles and research reports published (with a few exceptions) in the English language. Those found to be among the most relevant are included in the Reading List annexed to this report. The structure of the Reading List reflects the four central areas of the literature review, as outlined below.

First, an extensive review was conducted of secondary sources in the field of child psychology, with a focus on adolescents, as most unaccompanied asylum-seeking children are adolescents.¹³ This material in particular underpins Chapter 3. Psychological research and theory was included to elucidate issues that may affect how the credibility of children seeking asylum is assessed. Pertinent areas of psychology were identified through a scoping search of literature and consultation with experts in psychology and other fields. The areas identified involved both aspects of the individual applicant (namely development, autobiographical memory, mental health, attachment, fear and trust, and shame and stigma) and of the decision-maker (thinking processes, state of mind, personal experiences with children, beliefs and assumptions, and case-hardening and vicarious trauma). The interaction between the child and the interviewer was also considered.

Relevant literature was then identified and reviewed. Search terms were developed to reflect each area of interest. These search terms were applied to five psychology databases of peer-reviewed journals.¹⁴ Additional papers identified through citations, or recommendations, were also included. Papers were then reviewed to consider their relevance and whether they were methodologically sound. A full, systematic literature review was conducted for the passages on adolescents' autobiographical memory. This rigorous methodology is particularly useful when large bodies of information are available, in this case, 1,511 papers. The criteria of studies of adolescents focusing specifically on autobiographical memory were then selected for inclusion in this review, resulting in 35 papers. This reduces bias in the search and ensures that research material included is directly relevant.

Second, a search was conducted for academic articles and research reports with a focus on the assessment of the credibility of adolescents' testimony in areas of law *other* than refugee protection.¹⁵ Outside the asylum context, the credibility of children's statements most frequently arises in child protection proceedings, often in connection with allegations of child sexual abuse. In that framework, the literature most often relates to the credibility of very young children, and as such is of only limited relevance to this report. The search confirmed that while much has been written about young children as witnesses, there has been less focus on adolescents.

Third, literature on asylum-seeking children was reviewed, with specific attention to material relevant to the subject of credibility assessment.¹⁶ It was observed that research on unaccompanied children tends to fall into three categories – investigations into how states organize their responses to the arrival of asylum-seeking children; psychosocial and mental health studies; and studies with a focus on children's rights.¹⁷ Within the latter category, only a handful of works were found to address credibility assessment, suggesting that this is indeed an area needing more attention.

¹² Beyond the four countries of focus, case law research was limited to Europe's two regional courts (the European Court of Human Rights and the Court of Justice of the European Union), and to Australia, Canada, Ireland, New Zealand, the United Kingdom, and the USA.

¹³ See Chapter 2 for information on the age and gender-breakdown of UASC in the EU.

¹⁴ These were PsychInfo, Medline, PILOTS, JSTOR and Embase.

¹⁵ For this purpose, two legal databases, WestLaw and Hein on Line, were used, as well JSTOR.

¹⁶ WestLaw, Hein on Line, Lexis-Nexis and JSTOR were the databases used.

¹⁷ This breakdown is proposed by the Norwegian sociologist Ketil Eide. An explanation of Eide's categorization and a review of literature on unaccompanied asylum-seeking children can be found in U. Wersenhj, 'Unaccompanied Asylum-seeking Children: Whose Perspective?' *Childhood*, vol. 19, no. 4, 2011, pp. 495–507.

Finally, for the chapter on interpreter-mediated interviews with children, a literature search was conducted using databases containing materials related to communication and cross-cultural issues.¹⁸ There is a growing body of research on the role of the interpreter in asylum and immigration proceedings, but little specific investigation on the topic of interpreting for child claimants. Materials on interpreting in a legal setting as well as community interpreting were considered relevant to the context of interpreter-mediated asylum interviews.

2.2 Field research

To gain insight into how the credibility of unaccompanied children is assessed, this study included observation of first-instance interviews, the review of case files containing first-instance decisions and conversations with stakeholders. UNHCR appreciates the cooperation of the authorities in making files available to the researchers and allowing them to attend interviews; it also appreciates the asylum-seeking children who consented to UNHCR's presence and thanks the many stakeholders who shared their views with the researchers. In accordance with good research practices and national rules, care was taken to ensure the anonymity of the applicants, interviewers, interpreters and decision-makers, as well as of the stakeholders who were interviewed.

The field research concentrated on the first substantive instance of the asylum procedure, because that is where the applicant is entitled to a detailed interview on the merits of his or her claim, and the authorities have their principal opportunity to assess the credibility of the applicant's statements.

Given the qualitative nature of the study, and in view of procedural differences between the countries under study, a purposive method was used to select the samples of interviews to be observed and case files to be reviewed.¹⁹ To a certain degree, the method was necessarily also opportunistic, for the samples were limited by the cases of unaccompanied children being heard at the time of the research, and at locations the researchers were able to visit. The criteria framing the samples were the following:

The sample of interviews observed was limited to applicants who were still under the age of 18 at the time of interview;²⁰

- The interviews took place in the months of November and December 2013 and January 2014;
- The interviews took place at several different regional offices of the national asylum authority;
- The same interviewer was not observed more than twice, and both male and female interviewers were observed wherever possible;
- Files were reviewed of decisions taken after 1 January 2013;²¹
- In each country, in the case of interviews observed and files reviewed, an effort was made to ensure that the sample reflected the range of nationalities and ages represented in that country's caseload of unaccompanied children, and to include both male and female applicants, in roughly the proportions represented in the country. This was not always possible, given the scheduling of interviews and the timing of decisions;

¹⁸ Communication Abstracts, Project MUSE, Sociology Abstracts, Academic Search Premier and JSTOR.

¹⁹ W. L. Neuman, *Social Science Research Methods: Qualitative and Quantitative Approaches*, 6th edition, New York: Pearson Education, Inc., 2006, pp. 219–45.

²⁰ In some cases the child's claim to be under 18 was questioned at interview, or the child changed his or her claimed age.

²¹ In Sweden, the research reviewed decisions taken after 10 June 2013, in order to take account of new guidance issued by the Swedish Migration Board (SMB). After the publication of *Beyond Proof*, the SMB issued a new 'Judicial Position concerning the method for examining reliability and credibility' (RCI 09/2013 of 10 June 2013). References to that Judicial Position are to the English version of that document published by the SMB. The SMB's judicial positions are not binding, but are considered authoritative guidance for staff of the SMB.

- In each country, an effort was made to select files for review containing positive and negative decisions in a proportion roughly equivalent to the overall recognition/rejection rate for unaccompanied minors, where such data were available.

Table 1.1: National research in figures

Country	Interviews observed	Files reviewed	Stakeholders interviewed
Austria	10	30	12
Italy	15	31	32
Netherlands	–	33 ²²	14
Sweden	14	31	31
Total	39	125	89

Observation of interviews

A total of 39 personal interviews of unaccompanied children were observed in Austria, Italy and Sweden. As explained earlier, interviews were not observed in the Netherlands. The interviews observed in this research involved children of 17 different nationalities. The largest numbers (31 per cent) were Afghans. Some 5 per cent of the children whose interviews were observed were under 14 years of age, 23 per cent were aged 14–15, and 72 per cent were 16–17: 13 per cent were females. These percentages tally broadly with those observed in the EU as a whole during 2012–2013.²³

In each case, the informed consent of the child and of his or her guardian and/or legal representative was obtained before UNHCR attended the interview. It was explained to the children that UNHCR's presence would have no impact on the outcome of the case, and that UNHCR would not intervene during the interview. One child declined UNHCR's presence.

When observing interviews, the national researchers followed a semi-structured template of questions. The principal issues were:

- What was the child expected to present, in order to substantiate the claim?
- Did the determining authority share the duty to substantiate the claim? How?
- What was considered a satisfactory explanation for a child's inability to present documents?
- Did the interview focus on material facts?
- Was the questioning appropriate, considering the child's individual and contextual circumstances?
- Did the interpreter enable effective communication between the child and the interviewer?

Review of case files

The researchers reviewed 125 files containing first-instance decisions on asylum applications lodged by unaccompanied and separated children. Nearly all decisions were taken in 2013 or the first quarter of 2014.²⁴ The file sample consisted of male (81.5 per cent) and female (18.5 per cent) applicants from 30 countries of origin (plus two stateless applicants), with the largest number originating from Afghanistan (38 per cent). Of the 125 applicants, 9.5 per cent were under the age of 14, 17 per cent were aged 14–15 and 73.5 per cent were aged 16–17 at the time of the decision.²⁵

²² This included a detailed review of five files and a short review of 28. Some decisions reviewed in the Netherlands were taken before 1 January 2013.

²³ For age and gender breakdowns, see Tables 2.3 and 2.4. For the years 2009–2013, 37 per cent of UASC applicants in the EU as a whole were Afghans. Source: Eurostat, last updated 12 September 2014.

²⁴ Several older decisions were included in the Netherlands' sample.

²⁵ Of the 125 children in the sample, the decision-maker ultimately assessed one to be over 18.

Some 75 per cent of the files examined contained ‘positive’ decisions, meaning that refugee status, subsidiary protection or a national humanitarian status was granted. However, in view of the nature of the sample and the different approaches to children’s claims from one country of focus to another, this should not be assumed to be representative. Nor can this figure readily be compared with EU-wide outcomes, for no EU-wide statistics are published for decisions on the claims of unaccompanied children. In Sweden, which does publish statistics on the outcome of unaccompanied children’s applications, 68 per cent of cases decided during the period 2010 through May 2014 resulted in permission to remain, either as a refugee, a beneficiary of subsidiary protection, or because of ‘particularly distressing circumstances’.²⁶

The preponderance of positive decisions in the sample posed a challenge for the research, given that positive decisions contain detailed reasoning in only two of the four countries, namely Italy and Sweden. In Austria and the Netherlands, reasons are only set out in negative decisions.²⁷ Moreover, the length of decisions ranged from between 50 and 100 pages in one country, to one or two pages in another.

Each national researcher was asked to audit at least 30 files relating to unaccompanied children who have received a decision on the merits (positive or negative) in the first substantive instance of the procedure. The decisions were to be as recent as possible, but not earlier than 1 January 2013. If there were policy changes or guidance issued relating to credibility assessment during 2013, as was the case in Sweden, the sample should consist of decisions taken after the issuance of that guidance. Researchers were encouraged if possible to review the decisions of children whose interviews they had observed. This could be done in all cases in Italy, but in only a handful of cases in the three other countries.²⁸

The sample selection process necessarily had to be adjusted to each country. To select 30 files for audit, a recommendation was made to ask the authorities for a list of the 50 most recent decisions recorded in cases of unaccompanied children, with an indication of the outcome of the case as well as the age, sex, and nationality of the claimant.²⁹ From that pool of files, researchers were to select 30 cases where the decision contained an assessment of credibility and, to the extent possible, to include in the sample:

- Both positive and negative decisions;
- Both male and female applicants;
- Cases representing the top three countries of origin of unaccompanied child applicants in the country concerned, as well as other nationalities; and
- Children of a range of ages between 12 and 18 at the time the decision was made.

The researchers followed semi-structured questionnaires for their review of the decisions, with a view to understanding how decision-makers assessed the credibility of the children’s statements. The principal questions for investigation were:

- What indicators of credibility (or lack of credibility) did the decision-makers use?
- Was the credibility assessment individual and impartial? Did the decision-maker take the child’s individual and contextual circumstances into account? Was the assessment based on assumptions made by the decision-maker?
- What role, if any, did the principle of the ‘benefit of the doubt’ play in the credibility assessment?

²⁶ Source: SMB website, consulted 29 June 2014. The grant rate for unaccompanied children was significantly higher than the rate for all claimants over the same period (39.8 per cent).

²⁷ In Austria, detailed reasons are set out in decisions refusing refugee status but granting subsidiary protection, whereas in the Netherlands, detailed reasons are not set out in such decisions.

²⁸ In Italy, the Territorial Commission deliberates and usually decides immediately after the interview. In Austria and Sweden, considerable time may elapse between the interview and a decision.

²⁹ UNHCR receives copies of all asylum decisions in Austria. It was therefore possible to select decisions to include in the sample without the further assistance of the authorities. In the other countries, the authorities were requested to provide files.

Consultation with relevant stakeholders

The national researchers interviewed a total of 89 stakeholders in the four countries of focus, including personnel from the national asylum authority, judges, children's guardians, lawyers, interpreters and staff of national NGOs working with asylum-seeking children, psychologists, academics and others. Stakeholders who agreed to be interviewed were assured that conditions of anonymity would be respected. The stakeholders offered their perspectives on how the credibility of asylum-seeking children is assessed in their country and on how this process could be improved.

2.3 The voices of asylum-seeking children

Asylum-seeking children were not interviewed in this course of this project. The added-value of documenting children's own perceptions of the asylum process was weighed against the fact that the views of unaccompanied and separated asylum-seeking children in the EU have been recorded through a number of participatory assessments in recent years conducted by UNHCR, the EU's Fundamental Rights Agency (FRA) and others, including in the countries of focus.³⁰ The research team was wary of adding to the frustration of children articulated in a 2011 study: "*we are tired of constantly talking to researchers because we don't see it making any difference in our situation.*"³¹ It was decided to rely on existing assessments of unaccompanied asylum-seeking children rather than to conduct fresh interviews. This does not diminish the importance that UNHCR attaches to child-centred evidence, in line with Article 12 of the Convention on the Rights of the Child³² and UNHCR's own Age, Gender and Diversity Policy.³³

³⁰ For example, C. Mougne, *Trees Only Move in the Wind: A Study of Unaccompanied Afghan Children in Europe*, UNHCR Policy Development and Evaluation Service, PDES/2010/05, June 2010; UNHCR (Italy), *Protecting Children on the Move: Addressing Protection Needs through Reception, Counselling and Referral, and Enhancing Cooperation in Greece, Italy and France*, July 2012; UNHCR (Austria), *Gespräche mit unbegleiteten minderjährigen Asylsuchenden im Rahmen des Projekts – Unterstützung der Behörden bei Asylverfahren unbegleiteter Minderjähriger* (Conversations with Unaccompanied Minor Asylum-seekers in the Framework of the UBAUM Project: Support for Authorities Conducting Asylum Procedures for Unaccompanied Minors, 2011, hereafter UNHCR Austria, UBAUM); UNHCR (Regional Office for the Nordic and Baltic Countries), *Voices of Afghan Children: A Study on Asylum-seeking Children in Sweden*, June 2010.

³¹ B. Hancilova and B. Knauder, *Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices*, International Organization for Migration, December 2011, p. 18.

³² Article 12 (1) reads: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

³³ UNHCR, Age, Gender and Diversity Policy, 8 June 2011.

3. Terminology and other Explanations

3.1 ‘Child’

As indicated earlier, this report uses the word ‘child’ in the sense of Article 1 of the UN Convention on the Rights of the Child, by which a “*child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”³⁴ Official UNHCR documents also use ‘child’ with this meaning, understanding that it encompasses a wide range of developmental stages and levels of maturity, from early childhood to the late teens.

It is recognized that the term ‘child’ tends to evoke younger children, a perception reinforced by the dictionary definition of a child as “*a person between birth and puberty.*”³⁵ Nearly all unaccompanied asylum-seeking children in the EU are between 14 and 17 years’ old, and therefore the word ‘adolescent’³⁶ is also used, particularly in Chapter 3. Commonly understood to designate the phase between puberty and maturity, ‘adolescent’, like the terms ‘youth’ and ‘young people’,³⁷ brings with it the challenge of identifying when maturity has been reached.

The EU asylum instruments use the word ‘minor’, defined in the relevant Directives and Regulations as “*a third-country national or stateless person below the age of 18 years.*”³⁸ National laws, administrative instructions and policy documents frequently also use the term ‘minor’.

The choice of words can reflect not only linguistic and cultural differences, but also whether the subject is being looked at from a legal, sociological, psychological or layman’s perspective. Whatever word is used, it is important to recognize that childhood is “*not just a biological given; it is also based on a sociological construction. Children and youth develop differently, based on the environment they grow up in and experience.*”³⁹ In developmental terms, there is no clear-cut line between childhood and adulthood, and a number of disciplines – child welfare, juvenile justice and economics, among others – speak about a period of ‘transition’ between these two life phases.⁴⁰ The transition to adulthood of unaccompanied asylum-seeking, refugee and migrant children in Europe has been the subject of several recent studies.⁴¹

³⁴ All EU Member States have ratified the *Convention on the Rights of the Child*. The EU as such is not (yet) a party.

³⁵ *American Heritage Dictionary of the English Language*, 5th edition, Houghton Mifflin Harcourt, 2011.

³⁶ The *American Heritage Dictionary* defines an adolescent as ‘a young person who has undergone puberty but who has not reached full maturity: a teenager.’

³⁷ The *American Heritage Dictionary* defines youth as ‘the time of life between childhood and maturity’.

³⁸ For example, 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 (hereafter *Qualification Directive*, recast), Article 2 (k).

³⁹ Kenniscentrum Kinderrechten (Keki), *Establishing Child-friendly Justice: Reflections on How to Bring the Child Forward in the Future Justice Policy of the European Union*, Ghent, November 2013.

⁴⁰ There is a vast literature on children leaving care. The work of an international research network on transitions from care to adulthood can be consulted at: <http://www.lboro.ac.uk/microsites/socialsciences/intrac/>. Recent research findings on the topic are collected in a special issue of *Child and Youth Services Review*, vol. 35, no. 12 (December 2012) entitled: ‘Young People’s Transitions from Care to Adulthood’.

⁴¹ See for instance, E. Chase and J. Allsopp, “‘Future Citizens of the World?’ The Contested Futures of Independent Young Migrants in Europe”, RSC Working Paper Series No. 97 (November 2013), University of Oxford, Refugee Studies Centre; UNHCR and the Council of Europe, *Unaccompanied and Separated Asylum-seeking Children Turning Eighteen: What to Celebrate?* (Strasbourg, March 2014).

3.2 ‘Individual and contextual circumstances’

Another concept central to a full understanding of this report is what UNHCR terms the child’s ‘individual and contextual circumstances’. These encompass several notions found in EU asylum instruments and are largely employed interchangeably: they include the applicant’s ‘background’, his or her ‘individual circumstances’, ‘individual position’, ‘personal circumstances’ and ‘personal and general circumstances’.⁴²

UNHCR understands ‘individual circumstances’ to encompass the applicant’s personal characteristics (age and stage of development, nationality, ethnic origin, gender, sexual orientation and/or gender identity, state of health), background (culture, education, social status, rural/urban origin, religion), and any experiences of ill-treatment, whether in the country of origin, in a country of transit, or in the country where protection is being sought (torture and other trauma, persecution or serious harm, trafficking, other human rights violations).

‘Contextual circumstances’ are understood to encompass the situation prevailing in the applicant’s country of origin or habitual residence, including the legal, institutional, political, social, religious and cultural environment as well as any conflict or civil strife. The situation in countries through which the individual transited may also provide relevant contextual data.

3.3 ‘Credibility’ versus ‘reliability’

In *Beyond Proof*, UNHCR explains its understanding of the meaning of ‘credibility assessment’:

*“The term ‘credibility assessment’ ... is used to refer to the process of gathering relevant information from the applicant, examining it in the light of all of the information available to the decision-maker, and determining whether the statements of the applicant relating to material elements of the claim can be accepted, for the purpose of the determination of qualification for refugee and/or subsidiary protection status.”*⁴³

Some countries make a distinction between ‘credibility’ and ‘reliability’, with ‘reliability’ referring to the accuracy of the information provided by the asylum-seeker, and ‘credibility’ to the manner in which the information is presented.⁴⁴ This serves to underline that an applicant can provide a truthful account, even if some of the facts are incomplete, out-of-date or otherwise inaccurate.⁴⁵

In a number of the cases reviewed, the assessment of the facts presented by the child was conflated with an assessment of the ‘general’ or ‘personal’ credibility of the applicant. In this report, as in *Beyond Proof*, UNHCR encourages an approach that focuses on the credibility of the asserted material facts, rather than whether the applicant is considered a credible person.

⁴² The *Qualification Directive (recast)* uses ‘background’ in Article 4 (2) and both ‘background’ and ‘personal circumstances’ in Article 4 (3) (c). The *Asylum Procedure Directive (recast)* uses the term ‘background’ in Recital 33; ‘individual circumstances’ in Article 2 (d) and ‘personal and general circumstances’ in Article 15 (3) (a). See Chapter 2, notes 43–6 for full citations of the EU asylum instruments.

⁴³ UNHCR, *Beyond Proof*, p. 27.

⁴⁴ This is the case in Sweden, for instance. In mid-2013, the SMB issued a ‘Judicial Position concerning the method for examining reliability and credibility’, RCI 09/2013 (10 June 2013). Up to that date, the migration courts and the Migration Court of Appeal in Sweden had mainly used the term ‘credibility’. According to the SMB, the distinction between the two concepts is that *reliability* refers to the information at hand, while *credibility* refers to the manner in which the information has been presented. However, the Migration Court of Appeal has yet to confirm this distinction.

⁴⁵ The translation to and from English of the various terms used to signal credibility, reliability and well-foundedness was observed to vary, and this can also lead to confusion.

Furthermore, the International Association of Refugee Law Judges (IARLJ) has pointed out that the term ‘credibility’ is sometimes used to refer not (or not only) to the facts gathered in the first step of the status determination process, but to the second step, the assessment of whether the applicant has a well-founded fear of being persecuted (or, in the case of subsidiary protection, whether there are substantial grounds for believing that the applicant faces a real risk of serious harm).⁴⁶ It was also noted in this research that decisions sometimes referred to the ‘credibility’ of the child’s fear.

3.4 Caveats

In an ideal world, this research would have been conducted in all EU Member States. However, limitations in terms of time and budget made it necessary to restrict the research to a small number of countries. For this reason, the research does not purport to be comprehensive. UNHCR believes that the findings from the four countries of focus are nevertheless illustrative of issues faced across the European Union and beyond, and of the variation in the practice of asylum countries.

Inevitably, this report relies on original material in a number of languages, including the dialogue at asylum interviews and the text of decisions, as well as legislation and administrative instructions. All translations into English used in this report are unofficial translations by UNHCR, unless otherwise indicated. For ease of reference, titles of legislation and administrative instructions are provided in the unofficial English translation; a chart annexed to this report gives the titles in the original languages.

Finally, the reader is urged to familiarize him- or herself with the *Beyond Proof* study, to which this report frequently refers. This report examines the extent to which key principles and indicators set out in *Beyond Proof* are applied in children’s cases. With rare exceptions, the Reading List does not repeat sources cited in *Beyond Proof* but rather, focuses on materials relating specifically to asylum-seeking children.

⁴⁶ IARLJ, *Assessment of Credibility in Refugee and Subsidiary Protection Claims under the EU Qualification Directive: Judicial Criteria and Standards*, Haarlem (The Netherlands), 2013, pp.12–13.

CHAPTER 2

Setting the Stage

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1. Introduction

In recent history, there is no shortage of examples of unaccompanied children on the move. In 1937, at the time of the Spanish Civil War, thousands of children between the ages of three and fifteen were evacuated from Spain, mostly to France, but also to Britain, Belgium, Russia and even Mexico.¹ Between 1938 and 1940, the 'Kindertransport' rescue mission brought around ten thousand mainly Jewish children from Austria, Czechoslovakia, Germany and Poland to Britain.² More than 14,000 Cuban children were sent to the United States in the early 1960s after rumours were spread in Cuba that the government would take children away from their families.³ After 1975, unaccompanied Cambodian, Laotian and Vietnamese children streamed into refugee camps in Southeast Asia and were resettled in large numbers, mostly to Australia, Europe and North America.⁴ The plight and eventual resettlement of children orphaned or displaced during Sudan's civil war (1983–2005) entered the popular consciousness *inter alia* through a series of books and films about the 'Lost Boys'.⁵ These are just a few examples.

In all the cases mentioned above, Western countries participated in the resettlement of children from other countries on a discretionary basis and the resettlement programmes generally enjoyed political and public support. Governments determined in advance the numbers they would admit, and set the admission criteria. Asylum-seeking children, in contrast, arrive in an unplanned manner.

In the European Union, the number of unaccompanied and separated children seeking asylum remained comparatively stable during the five-year period of 2009–2013, in fact between 10,000 and 12,000 annually. The number for 2014 is expected to show a significant increase in view of the large number of arrivals from Syria and Eritrea, in particular. Among the more than 112,000 arrivals by sea in Italy in the first eight months of 2014, many of whom were rescued by Italy in its 'Mare Nostrum' operation, 9 per cent (or nearly 10,000) were unaccompanied children.⁶

Unaccompanied asylum-seeking children are unevenly distributed across the European Union, and child migration is a sensitive political issue in the shifting landscape of countries that are disproportionately affected by it. In 2013, half of all the asylum applications that unaccompanied children lodged in the EU were presented in just two countries – Sweden (30 per cent) and Germany (19 per cent).⁷ In 2008, the United Kingdom was the most affected country, with just over one-third of all claims.⁸ In 2000, 50 per cent of unaccompanied asylum-seeking children in the EU applied in the Netherlands.⁹

¹ D. Legarreta, *The Guernica Generation: Basque Refugee Children of the Spanish Civil War*, University of Nevada Press, 1985.

² D. Hodge, *Rescuing the Children: The Story of the Kindertransport*, Tundra Books, 2012.

³ M. De Los Angeles Torres, *The Lost Apple: Operation Pedro Pan, Cuban Children in the US, and the Promise of a Better Future*, Beacon Press, 2003.

⁴ W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, Zed Books, 1998, pp. 210–14.

⁵ See for instance D. Eggers, *What is the What: The Autobiography of Valentino Ashak Deng*, McSweeney's, 2005; the 2006 feature film 'God Grew Tired of Us', directed by C. D. Quinn and T. Walker.

⁶ Source: UNHCR Italy, based on data from the Italian Ministry of the Interior. Until 2014 statistics are available, it will not be known how many of these children applied for asylum.

⁷ The majority of UASC applicants in Sweden and Germany in 2013 were from Afghanistan and Somalia, with children from Syria comprising the third largest group. Source: Eurostat, last updated 12 September 2014.

⁸ The majority of UASC who applied for asylum in the UK in 2008 were from Afghanistan and Somalia. Source: Eurostat, last updated 12 September 2014.

⁹ In 2000, 6,705 unaccompanied children applied for asylum in the Netherlands, out of 13,005 in the (then 15) EU countries and 16,112 in 26 European countries. The largest number of unaccompanied children seeking asylum in the Netherlands that year were from Angola. Source: UNHCR, Division of Operational Support, *Trends in Unaccompanied and Separated Children Seeking Asylum in Europe, 2000*, Geneva, November 2001.



There is continual tension between child welfare concerns on the one hand and immigration enforcement imperatives on the other. Even though children in many countries of origin are known to face a high risk of physical and sexual violence, military recruitment, trafficking and other abuses, when they reach countries of destination as asylum-seekers they are sometimes seen as ‘taking advantage’ of the refugee and/or child protection systems. The uneven response to the arrival of tens of thousands of unaccompanied children from Central America to the United States in 2014 is a case in point.¹⁰

The fear that overly generous policies serve as a ‘pull factor’ exists alongside concern that restrictive policies may violate children’s fundamental rights, including the right to seek and enjoy asylum from persecution.¹¹ Some of the stakeholders interviewed for this research, including interviewers and decision-makers, spoke of the strain they felt not only because of the inherently distressing nature of their work but also because of the political and social pressures surrounding immigration issues.¹²

¹⁰ See ‘Under-age and on the Move’, *The Economist*, 28 June 2014; UNHCR Regional Office for the United States and the Caribbean, *Children on the Run: Unaccompanied Children leaving Central America and Mexico and the Need for International Protection*, Washington, DC, 2014.

¹¹ J. Bhabha, ‘Minors or Aliens: Inconsistent State Intervention and Separated Child Asylum-Seekers’, *European Journal of Migration and Law*, vol. 3, 2001, pp. 283–314.

¹² SH 7, SH 8.

2. Data on Asylum-seeking Children in the EU

Of the 435,385 applicants for asylum in the European Union in 2013, 119,725 or 27.5 per cent were under the age of 18.¹³ Most of these children were accompanied by one or both of their parents. Just 2.9 per cent of all asylum-seekers in 2013 (12,640) were children seeing asylum alone.

UNHCR's worldwide data show that unaccompanied children generally account for around 4 per cent of any refugee population. This appears to hold true for asylum-seeking populations as well. In 2013, UNHCR reported that unaccompanied children filed 25,300 asylum applications in 77 countries. This represented about 4 per cent of all asylum claims in those countries, and was consistent with the percentage observed over the past five years.¹⁴ The EU percentage for 2013 was therefore below the global average.

The European Commission (Eurostat) requires Member States to provide annual statistics of applications for asylum from 'unaccompanied minors' disaggregated by age, sex and citizenship. It does not require them to report on the outcome of these applications.¹⁵ Some Member States go beyond the Eurostat requirements. Sweden, for example, publishes monthly statistics on the outcome of unaccompanied children's applications, broken down by the status granted to them.¹⁶

The EU's Fundamental Rights Agency notes that "*there is significant variation in the quality, availability and clarity of data between EU Member States*"¹⁷ and there have been calls for governments to improve their statistical reporting.¹⁸ Still, the basic characteristics of this population are clear: unaccompanied and separated asylum-seeking children in the EU represent less than 5 per cent of all asylum-seekers, are predominantly male and are mostly over 14 years of age.

It is also clear that large numbers of unaccompanied children arrive in the European Union and do *not* apply for asylum.¹⁹ Data on this group are obviously difficult to collect; available information suggests that in some countries, such as Italy, the number of unaccompanied children who do not apply for asylum is considerably larger than the numbers who do.²⁰

¹³ Source: Eurostat, last updated 12 September 2014.

¹⁴ UNHCR, *Global Trends 2013*, p. 29.

¹⁵ Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, *Official Journal of the European Union*, L/199/23, 31 July 2007, Article 4 (3). States must report the outcome of asylum applications by age of the applicant. However, statistics concerning applications of persons under 18 include both unaccompanied and accompanied children.

¹⁶ Figures provided by the Swedish Migration Board (Migrationsverket) are available at <http://www.migrationsverket.se/English/About-the-Migration-Board/Statistics.html>

¹⁷ European Union Agency for Fundamental Rights (FRA), *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union*, Summary Report, Vienna, March 2009, p. 15.

¹⁸ The European Commission, in its 'Action Plan on Unaccompanied Minors' (COM (2010) 213 final, Brussels, 6 May 2010), notes that 'statistics on unaccompanied minors are not widespread or consistent' (p.2) and that the situation of unaccompanied minors 'cannot be properly assessed, nor appropriate solutions found, without a clear evaluation based on comprehensive, reliable and comparable data' (p. 3). The Council of the European Union, in its 'Council Conclusions on Unaccompanied Minors' of 3 June 2010 encouraged Member States 'to use the full potential of the Regulation (EC) 826/2007 on Community statistics on migration and international protection in order to collect comprehensive data on UASC arriving on the territory of the Member States' (p. 3).

¹⁹ E. Chase and J. Allsopp, "Future Citizens of the World?" The Contested Futures of Independent Young Migrants in Europe', RSC Working Paper Series, no. 97, November 2013, p. 10.

²⁰ Figures provided to UNHCR by Italy's Ministry of Interior show more than 5,000 unaccompanied children arrived by sea in 2013, while Italy reported 805 UASC asylum applications to Eurostat that year.

The table below shows the evolution of asylum applications from unaccompanied and separated children in the EU, from 2009 to 2013. While the absolute number of applicants remained quite stable, their number fell as a proportion of all applications.

Table 2.1: Unaccompanied and separated child asylum applicants in the EU²¹

Year	2013	2012	2011	2010	2009
UASC applicants	12,640	12,475	11,695	10,620	12,225
All applicants	435,385	336,015	309,820	260,835	266,395
UASC %	2.9%	3.7%	3.8%	4.1%	4.6%

Table 2.2: Top ten nationalities of UASC applicants in the EU in 2013, as compared to previous years²²

Nationality	2013	2012	2011	2010	2009
Afghanistan	3,300	5,205	5,245	3,945	4,595
Somalia	1,575	950	645	1,200	1,800
Syria	1,025	395	155	110	75
Eritrea	715	250	250	325	410
Morocco	525	300	125	75	65
Stateless	350	90	70	70	50
Russia	340	260	450	345	470
Pakistan	340	440	225	165	70
Algeria	335	340	200	175	150
Guinea	270	385	480	405	310
All others	3,865	3,860	3,850	3,805	4,230
EU total	12,640	12,475	11,695	10,620	12,225

Within the EU, the distribution of UASC applications is uneven, with a handful of countries receiving the majority of claims every year, as illustrated by the following table.

²¹ Source: Eurostat, updated 12 September 2014. The 2009–2012 data cover 27 EU Member States; the 2013 data cover 28 Member States because of Croatia's accession on 1 July 2013.

²² Ibid.

Table 2.3: Main EU countries receiving UASC applications, by year, as a percentage of all UASC applications in the EU²³

2013	2012	2011	2010	2009
Sweden 30.5%	Sweden 28.7%	Sweden 22.7%	Sweden 22.5%	UK 24.5%
Germany 20%	Germany 16.8%	Germany 18.2%	Germany 18.4%	Sweden 18.4%
UK 9.2%	Austria 11%	UK 12.0%	UK 16.1%	Germany 10.7%
Austria 7.4%	UK 9.0%	Belgium 11.8%	Belgium 8.1%	Netherlands 8.5%
Italy 6.4%	Belgium 7.8%	Austria 8.6%	Netherlands 6.6%	Austria 8.5%
Belgium 3.2%	Italy 7.7%	Italy 7.0%	France 5.7%	Belgium 5.8%
Hungary 3.0%	France 3.9%	France 5.1%	Austria 5.6%	Finland 4.5%
All others ²⁴ 20.3%	All others 15.1%	All others 14.6%	All others 17.0%	All others 19.1%

The gender and age breakdown of unaccompanied child asylum applicants in the EU has remained quite consistent over the past five years, as illustrated by the tables below.

Table 2.4: Unaccompanied and separated child asylum applicants in the EU, by gender²⁴

	2013	2012	2011	2010	2009
Females	16.2%	16.5%	17.4%	20%	17%
Males	83.8%	83.5%	82.6%	80%	83%

Table 2.5: Unaccompanied and separated child asylum applicants in the EU, by age-group²⁵

	2013	2012	2011	2010	2009
Under 14	10.2%	9.8%	10.6%	9.7%	10.3%
14–15 yrs.	21.9%	22.5%	23.4%	24.1%	26.9%
16–17 yrs.	66.9%	66.0%	62.8%	61.9%	56.7%
Unknown	1.0%	1.7%	3.2%	4.3%	6.1%

²³ Source: Eurostat, last updated 12 September 2014.

²⁴ Source: Eurostat, last updated 12 September 2014. Rounded figures, discounting small numbers of applicants whose gender is reported by Eurostat as 'unknown'.

²⁵ Source: Eurostat, last updated 12 September 2014.

3. Children's Rights: EU Primary Law and Policy Framework

The EU's approach to unaccompanied asylum-seeking children is underpinned by its recognition of children as bearers of rights. Article 3 of the Treaty on European Union provides that the Union shall promote the protection of the rights of the child.²⁶

It was only in the twentieth century that children began to be seen as independent bearers of rights, rather than as the property of their parents. With this, came an understanding that states are responsible for protecting children's rights and for enabling children to assert their rights.²⁷ Over time this led to the adoption of the most widely ratified international instrument – the 1989 Convention on the Rights of the Child.²⁸ The Convention is built around four core principles. These are: non-discrimination; the obligation of states to consider the child's best interests; the child's right to life, survival and development; and the right of the child to be heard.

Article 24 of the EU Charter of Fundamental Rights is dedicated to the rights of the child.²⁹ It reiterates two of the key principles from the Convention on the Rights of the Child:

- (1) *Children ... may express their views freely. Such views shall be taken into consideration on matters which concern them, in accordance with their age and maturity.*
- (2) *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*

At the policy level, the European Commission has identified the effective protection of children's rights as a priority.³⁰ Its 2006 communication, 'Towards an EU Strategy on the Rights of the Child', recognized the challenge of ensuring that the rights of asylum-seeking children are fully respected in the laws and policies of the EU and its Member States.³¹ The European Council's 2009 'Stockholm Programme' set out policy objectives in the area of freedom, security and justice for the next five years. That programme called for an "*ambitious Union strategy on the rights of the child*", and invited the European Commission to identify measures to protect and promote the rights of unaccompanied minors in the context of European Union migration policy.³²

In response, in 2010, the European Commission adopted an 'Action Plan on Unaccompanied Minors 2010–2014'.³³ The plan covers a range of issues, including guardianship, procedural guarantees, age assessment and family tracing, but its focus is squarely on cooperation with third countries to prevent 'unsafe' migration

²⁶ Consolidated Version of the Treaty on European Union, *Official Journal of the European Union* C 83/16, 30 March 2010.

²⁷ R. Dixon and M. C. Nussbaum, 'Children's Rights and a Capabilities Approach: The Question of Special Priority', *Cornell Law Review*, vol. 97, pp. 549–93, at 550–1.

²⁸ As indicated earlier, all EU Member States have ratified the CRC, and the Court of Justice of the European Union takes account of the CRC when applying the principles of Community law (CJEU, Case C-540/03, *European Parliament v Council of the European Union*, Judgment of 27 June 2006, paragraph 37).

²⁹ Charter of Fundamental Rights of the European Union, *Official Journal of the European Union*, C/83/389, 30 March 2010, Article 24.

³⁰ European Commission, 'Strategic Objectives 2005–2009. Europe 2010: A Partnership for European Renewal. Prosperity, Solidarity and Security', COM (2005) 12 final, Brussels, 26 January 2005, at 2.3.

³¹ European Commission, 'Towards an EU Strategy on the rights of the child', COM (2006) 367 final, Brussels, 4 July 2006, at I.4.2.

³² European Council, 'The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens', *Official Journal of the European Union*, C 115/1, 4 May 2010, at 2.3.2.

³³ European Commission, 'Action Plan on Unaccompanied Minors (2010–2014)', COM (2010) 213 final, Brussels, 6 May 2010.

and to encourage safe returns. In endorsing the Action Plan, the Council of the European Union called on the Commission to assess whether the relevant EU legislation provides sufficient procedural guarantees for unaccompanied minors, including asylum-seekers.³⁴

In 2013, the European Parliament adopted a wide-ranging resolution ‘On the Situation of Unaccompanied Minors in the European Union’. It stresses that every person under 18 years of age, without exception, is to be regarded as a child. It contains several recommendations of relevance to unaccompanied minors’ asylum procedures, including a call for multidisciplinary training of Member State officials handling children’s claims, and the need to ensure that procedures involving children are carried out “*with due regard for their age, degree of maturity and level of understanding*”.³⁵

Three operational agencies of the European Union – the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the Fundamental Rights Agency (FRA) and the European Asylum Support Office (EASO) have all undertaken initiatives related to the protection of unaccompanied asylum-seeking children.

Frontex has undertaken research to understand how (and how many) unaccompanied children reach the EU, including the routes, the facilitators and criminal networks involved, as well as preferred destinations. It published a study entitled on ‘unaccompanied minors’ in the asylum process,³⁶ and has led joint operations to raise awareness of child trafficking and of the need to identify child victims at the earliest opportunity.³⁷

Protecting the rights of asylum-seeking children has featured prominently in the work programmes of the Fundamental Rights Agency since its establishment in 2007. In December 2010, the agency published a comparative report entitled ‘Separated, Asylum-seeking Children in European Union Member States’, which was based on extensive interviews with children that reflected the children’s perceptions of the asylum procedure. In 2014, it issued a handbook on guardianship for children deprived of parental care.³⁸

Asylum-seeking children have been an area of focus for the EASO since the agency’s establishment in 2010. As part of its training curriculum, the EASO has developed a module on interviewing children that is widely used by Member States’ asylum services.³⁹ It has been actively engaged in three key subjects of relevance to asylum-seeking children: these are age assessment, family tracing, and the meaning of the ‘best interests of the child’ within the scope of international protection.⁴⁰

Following the call in the European Commission’s 2010 Action Plan for the EASO to develop country-of-origin information (COI), the two first COI reports, on Afghanistan, were published in 2012.⁴¹ Subsequent reports have focused on Somalia and Chechnya. The effects of conflict on children, child-specific persecution, and traditional practices harmful to children are addressed in these reports to varying degrees.

³⁴ Council of the European Union, ‘Council Conclusions on Unaccompanied Minors’, 3018th Justice and Home Affairs Council Meeting, Luxembourg, 3 June 2010, para. 11. However, the strategic guidelines for legislative and operational planning for 2014–2019 adopted by the European Council on 27 June 2014 do not address children’s rights (European Council Conclusions, Brussels, 27 June 2014, EUCO, 79/14).

³⁵ European Parliament, ‘Resolution of 12 September 2013 on the Situation of Unaccompanied Minors in the EU’, A7-0251/2013, paras. 1, 17 and 19.

³⁶ Frontex, *Unaccompanied Minors in the Migration Process*, Ref number 18477, Warsaw, December 2010.

³⁷ For instance, Joint Operation Agelaus was conducted at 42 European airports in 2010.

³⁸ European Union Fundamental Rights Agency (FRA), *Separated, Asylum-seeking Children in European Union Member States, Summary Report* (April 2010) and *Comparative Report* (December 2010); *Guardianship for Children Deprived of Parental Care: A Handbook to Reinforce Guardianship Systems to Cater for the Specific Needs of Child Victims of Trafficking* (published with the European Commission) 2014.

³⁹ EASO, Training Module 6.1, Interviewing Children.

⁴⁰ Information on all of these activities can be found on the EASO website www.easo.europa.eu and in the agency’s monthly newsletters.

⁴¹ EASO, *Country of Origin Information Report Afghanistan: Taliban Strategies – Recruitment*, July 2012. This report contains a short passage on child recruitment. It was followed in December 2012 by a report entitled *Afghanistan: Insurgent Strategies and Targeted Violence against Afghans*. A report on the situation in south and central Somalia was issued in August 2014 and one on women, marriage, divorce and child custody in Chechnya in September 2014.

4. EU Asylum Legislation: Child-specific Provisions

The EU's legal framework for the examination of asylum applications is contained in four instruments, all of which were revised (or 'recast') between 2011 and 2013. These are:

- The 'Dublin Regulation'⁴², establishing the criteria and mechanisms for determining the Member State responsible for examining an application;
- The 'Reception Conditions Directive',⁴³ which articulates standards for the treatment of asylum-seekers for as long as they are permitted to remain on the territory of a Member State;
- The 'Qualification Directive'⁴⁴ on standards for the qualification of applicants as beneficiaries of international protection and the content of the protection granted; and
- The 'Asylum Procedures Directive',⁴⁵ setting out common procedures for granting and withdrawing international protection.

Each of these instruments contains specific provisions on asylum-seeking children and reaffirms the principle (set out in Article 3 of the CRC) that the best interests of the child should be a primary consideration in all actions concerning children. Three instruments – the Dublin Regulation, the Reception Conditions Directive, and the Asylum Procedures Directive – contain overlapping requirements regarding the appointment of a 'representative' (or guardian) for unaccompanied children, with a view to safeguarding the best interests of the child and to exercising legal capacity for the child where necessary. The right of the child to be heard (Article 12 of the CRC) underpins the provisions concerning children in the Dublin Regulation, the Qualification Directive and the Asylum Procedures Directive.

Member States were required to transpose the (recast) Qualification Directive into national law by December 2013. The Dublin Regulation does not require transposition into national law. Unless otherwise indicated, all references in this report to the Dublin Regulation and to the Qualification Directive are therefore to the *recast* versions.

Member States must transpose the recast Reception Conditions Directive and the Asylum Procedures Directives by July 2015. Where reference is made to these instruments, the report distinguishes between the original and recast versions.

⁴² Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), *Official Journal of the European Union*, L 180/31, 29 June 2013 (hereafter the *Dublin Regulation recast*).

⁴³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *Official Journal of the European Union*, L 180/96, 29 June 2013 (hereafter the *Reception Conditions Directive recast*); Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *Official Journal of the European Union*, L 31/18, 6 February 2003 (hereafter the *Reception Conditions Directive, original version*).

⁴⁴ 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), *Official Journal of the European Union*, L 337/9, 20 December 2011 (hereafter the *Qualification Directive recast*).

⁴⁵ 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), *Official Journal of the European Union*, L 180/60, 29 June 2013 (hereafter the *Asylum Procedures Directive recast*); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal of the European Union*, L 326/13 of 13 December 2005 (hereafter the *Asylum Procedures Directive, original version*).

4.1 The Dublin Regulation

The Dublin Regulation establishes that the Member State responsible for an unaccompanied child's asylum application shall be the state in which a parent (or other adult legally responsible for the child) or sibling of the child is legally present. In the absence of a qualifying family member in another Member State, the responsible state is the one "*where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor*".⁴⁶

The lack of clarity of this provision in the case of children who apply in more than one Member State led the United Kingdom, in 2011, to request guidance from the Court of Justice of the European Union.⁴⁷ In June 2013 the court clarified that when an unaccompanied minor applies for asylum in more than one Member State, the responsible state is the one in which the child is present, after having lodged an application there.⁴⁸ Member States therefore have a clear interest in determining the applicant's age and the whereabouts of family members within the EU.⁴⁹

The recast Dublin Regulation contains several child-specific guarantees that were not in the initial version. Member States must provide an information leaflet for unaccompanied minors containing basic guidance on the system established by the Dublin Regulation.⁵⁰ They must appoint a 'representative' to assist unaccompanied minors with the Dublin procedure⁵¹ and to ensure that the child's best interests are taken into consideration. In assessing best interests, Member States are to take due account, *inter alia*, of "*the views of the minor, in accordance with his or her age and maturity*".⁵² Staff of the competent authorities who deal with requests concerning unaccompanied minors "*shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors*".⁵³

4.2 The Reception Conditions Directive

The Reception Conditions Directive, in both original and recast versions, sets out standards applicable to all asylum-seeking children pertaining to housing, access to education and leisure activities, detention, and care of victims of trauma and torture. Articles 23 and 24 of the recast version (devoted to *minors* and *unaccompanied minors* respectively) expand on Articles 18 and 19 of the original version of the directive with respect to requirements for the appointment of a representative (guardian), suitable accommodation, and family tracing. New language in the recast version provides some guidance on how to assess whether specific actions are in the child's best interests. Member States should consider family reunion possibilities, the child's well-being and social development, safety and security and the views of the minor.⁵⁴

⁴⁶ Dublin Regulation (recast), Article 8.

⁴⁷ *MA, BT, DA v Secretary of State for the Home Department* (Reference for a preliminary ruling from Court of Appeal (England and Wales) (Civil Division)), C-648/11, European Union: Court of Justice of the European Union, 19 December 2011.

⁴⁸ *MA, BT, DA v Secretary of State for the Home Department*, judgment of 6 June 2013, Court of Justice of the European Union, Case C-648/11.

⁴⁹ The Dublin Regulation requires states to take '*appropriate action*' to trace relatives of the child on the territory of the Member States. Dublin Regulation (recast), Article 6 (4).

⁵⁰ Dublin Regulation (recast), Article 4 (3).

⁵¹ Dublin Regulation (recast), Article 6 (2).

⁵² Dublin Regulation (recast), Article 6 (3) (d).

⁵³ Dublin Regulation (recast), Article 6 (3) (d).

⁵⁴ Reception Conditions Directive (recast), Article 23 (2).



4.3 The Qualification Directive

The Qualification Directive contains the important recognition that acts of persecution can take child-specific forms, and stipulates that Member States should have regard to such forms of persecution, when assessing minors' claims.⁵⁵ The key provision of the Qualification Directive relating to credibility assessment is Article 4, on the assessment of facts and circumstances, discussed in section 5.1 below.

4.4 The Asylum Procedures Directive

Both the original and recast versions of the Asylum Procedures Directive incorporate specific procedural guarantees for children (minors).⁵⁶ In both versions, Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.⁵⁷ Personnel conducting interviews and preparing decisions must be “*competent to take account of the personal and general circumstances surrounding the application*” and have the “*necessary knowledge of the special needs of minors*”.⁵⁸ The recast version clarifies that children are entitled to apply for asylum in their own right, even if accompanied by their parents or other adult relatives.⁵⁹

⁵⁵ *Qualification Directive (recast)*, Recital 28 and Article 9 (2) (f).

⁵⁶ Article 25 of the *Asylum Procedures Directive (recast)* and Article 17 of the original version are entitled ‘Guarantees for unaccompanied minors’.

⁵⁷ *Asylum Procedures Directive (recast)*, Article 14 (1); original version, Article 12 (1).

⁵⁸ *Asylum Procedures Directive (recast)*, Articles 15 (3) and 25 (3) (a); original version, Articles 13 (3) (a), 17 (4) (a) and (b).

⁵⁹ *Asylum Procedures Directive (recast)*, Article 7 (3); original version Article 4 (a). In the original version of the directive, states are free to determine in national legislation the cases in which a minor can make an application on his or her own behalf.

Article 25 of the recast Directive and Article 17 of the original version set out ‘Guarantees for unaccompanied minors’. These include the appointment and role of the child’s representative, the provision of legal and procedural information, the way in which the interview is conducted, age-assessment procedures, and the application of accelerated or border procedures to children. The recast directive, reproducing language from the Reception Conditions Directive, provides some guidance on how to assess the child’s best interest: “*Member States should in particular take due account of the minor’s well-being and social development, including his or her background.*”⁶⁰ The recast version also requires that Member States assume the applicant is a minor, if there is still doubt about his or her age after a medical examination to determine age has been conducted.⁶¹

4.5 The Directive on Human Trafficking

The Directive on Human Trafficking⁶² is not part of the asylum *acquis*, but is of relevance to asylum-seeking children who are or may be victims of trafficking. This directive has a stronger child rights focus than the asylum instruments,⁶³ while covering much of the same ground: it reaffirms the principle of the best interests of the child, contains requirements concerning guardianship, and recognizes the special vulnerability of children. Article 15, on ‘Protection of child victims of trafficking in human beings in criminal investigations and proceedings’ proposes some tools and safeguards – such as the video-recording of testimony – which could be helpful in interviewing asylum-seeking children and assessing their credibility.

In summary, while relevant EU legislation pays considerable attention to broad principles of child protection, there is limited guidance on how to assess children’s applications. The applicability to unaccompanied children’s claims of the passages of the Qualification and Asylum Procedures Directives relating to credibility assessment is discussed below.

⁶⁰ *Asylum Procedures Directive (recast)*, Recital 33.

⁶¹ *Asylum Procedures Directive (recast)*, Article 25 (5).

⁶² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, *Official Journal of the European Union*, L 101/5, 15 April 2011 (hereafter *Directive on Human Trafficking*). Six UN agencies, including UNHCR and UNICEF, published a joint UN commentary on this Directive in November 2011 which can be found at <http://www.refworld.org/docid/4edcbf932.html>.

⁶³ Perhaps reflecting this stronger focus, the Directive (with a few exceptions) uses the word ‘child’ rather than ‘minor’, which the asylum instruments favour.

5. Standards for Credibility

Assessment in the EU

Asylum Acquis

As explained in *Beyond Proof*, “neither the Asylum Procedures Directive nor the Qualification Directive explicitly or comprehensively prescribes how the credibility assessment should be carried out. However, Member States and decision-makers do not have unfettered discretion with regard to the assessment of credibility.”⁶⁴

In fact, only two articles in the EU asylum instruments provide a degree of guidance on credibility assessment. These are Article 4 of the Qualification Directive and Article 8 of the original version of the Asylum Procedures Directive (Article 10 of the recast version).

5.1 The Qualification Directive, Article 4

Article 4, on the assessment of facts and circumstances, stipulates that Member States “*may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application*”.⁶⁵ These elements include the applicant’s statements and all documentation “*at his or her disposal*” concerning identity, age, background, nationality, places of previous residence, prior asylum applications, travel route, travel documents and the reasons for applying for international protection. The Member State is obliged to assess the relevant elements of the application “*in cooperation with the applicant*.”⁶⁶

Article 4 does not explicitly refer to children’s claims but Article 4 (3) requires the assessment of all applications ‘on an individual basis’, taking into account “*the individual position and personal circumstances of the applicant, including factors such as background, gender and age*”.

Article 4 (5) provides guidance on how to assess the credibility of statements that are not corroborated by documentary evidence. It sets five (cumulative and overlapping) conditions for accepting such statements. These apply equally to adults and children:

- The applicant has made a ‘genuine effort’ to substantiate the claim;
- The applicant has submitted all ‘relevant elements’, at his or her disposal, and has given a ‘satisfactory explanation’ for any missing elements (documents);
- The applicant’s statements are ‘coherent and plausible’, meaning that they do ‘not run counter to available specific and general information’;
- The applicant applied for international protection ‘at the earliest possible time’, unless he or she can demonstrate ‘good reason’ for not having done so; and
- The ‘general credibility’ of the applicant has been established.

⁶⁴ UNHCR, *Beyond Proof*, p. 34.

⁶⁵ Article 4 of the *Qualification Directive (recast)* is unchanged from the original version.

⁶⁶ *Qualification Directive (recast)*, Article 4 (1) and (2).

5.2 The Asylum Procedures Directive: Article 8

The only other article in the asylum instruments offering a measure of guidance on how to approach credibility assessment is Article 8 of the original version of the Asylum Procedures Directive (Article 10 of the recast version), entitled ‘Requirements for the examination of applications’. Both versions require Member States to ensure that decisions on asylum applications are taken after ‘an appropriate examination’ and that applications are examined and decisions taken ‘individually, objectively and impartially’. ‘Precise and up-to-date’ country-of-origin information must be available to decision-makers, and personnel examining applications and taking decisions must “*know the relevant standards applicable in the field of asylum and refugee law*”. The recast Directive adds that personnel examining applications must have the possibility to seek expert advice as needed, including on child-related issues.⁶⁷

In this report, the interpretation and application of these two articles in the context of asylum-seeking children will be investigated, it being understood that the deadline for transposition into national law of the recast Asylum Procedures Directive is July 2015.

⁶⁷ Asylum Procedures Directive (recast), Article 10 (3).

6. Short Overview of the First Instance of the Asylum Procedure for Unaccompanied Children in the Countries of Focus

The aim of the Common European Asylum System is to make sure that applicants for international protection are treated fairly, and that their cases are examined according to uniform standards, so that no matter where they apply within the EU, the outcome will be similar. Yet, there are still considerable differences from one country to another, even among the four countries of focus in this research, as evidenced by the following short descriptions of the asylum process as it relates to unaccompanied children.

Some differences that may affect the assessment of a child's claim include the possible outcomes of the procedure; the time-frame for the first instance; whether interviews are conducted by specialist or generalist personnel; whether the interviewer is also the decision-maker; whether the decision is made by an individual or by a panel; whether legal counsel is provided to the child or not; the role and level of engagement of the child's guardian; and the nature, timing and impact of age assessments and of family tracing.

6.1 Austria

Possible outcomes

For unaccompanied children, the possible outcomes of the asylum procedure in Austria are the same as for adults – recognition as a refugee or beneficiary of subsidiary protection, or rejection. There is no national humanitarian status or other special status for children, although (as in the case of adults) expulsion may be prohibited on the grounds of European Human Rights Convention or for other exceptional reasons.

Applications, interviews and decision-making

The Federal Office for Immigration and Asylum (hereinafter, the Federal Office) is responsible for the first instance asylum procedure.⁶⁸ According to the General Administrative Procedure Act, a first instance decision, including in the asylum procedure, should be taken without unnecessary delay and normally within six months.⁶⁹

⁶⁸ The Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) replaced the former Federal Asylum Office (*Bundesasylamt*) in connection with the restructuring of the Austrian asylum procedure as of 1 January 2014. All references in this report correspond to the new procedure, unless otherwise specified.

⁶⁹ General Administrative Procedures Act (AVG), Section 73 (1). Of the ten children whose interviews were observed in this research, five had waited for their interviews for over six months, and five for under six months. However, because the research took place at a time of major reorganization of the Austrian asylum procedure, these time-frames may not be indicative of general practice.

An unaccompanied or separated child may file an asylum application with an agent of the public security service, at any security authority, or at an initial reception centre of the Federal Office. As required by the Eurodac Regulation, fingerprints are taken of all applicants aged 14 and older.⁷⁰ During the admission process, children aged 14 and older are accommodated in an initial reception centre run by the Federal Office.⁷¹ An 'initial interrogation' is conducted in the centre or elsewhere by police officers, whereas the Federal Office is responsible for the first interview in the admissibility procedure. These screenings precede the substantive interview and focus in principle on identity, age, family members in Dublin participating countries, and travel route. The determination of whether Austria is responsible under the Dublin Regulation for conducting the status determination is based on the results of this process, and any other evidence available.

Although the Federal Office has trained specialized adjudicators to handle children's applications, not all procedures with children are conducted by officials with this particular expertise. In general, asylum applications are handled by 'case owners' who are responsible from the initial application until the resolution of the case, whether positive or negative. The case owner interviews the applicant and issues the decision.

First-instance asylum decisions must be in writing. The decisions recognizing refugee status need to be short and, in line with the law, contain no detailed reasoning. Hence, they utilize standard text without individualized conclusions or credibility assessments. Negative decisions (including those that refuse refugee status but grant subsidiary protection) are lengthy and detailed – the audited decisions ranging from between 50 and 100 pages.

Legal counsel and guardianship

All unaccompanied children are provided with legal counsel in the asylum procedure. A legal adviser working for one of two organizations contracted by the government will serve as the child's legal counsel during his or her stay at the initial reception centre, and must be present at the initial interrogation, if it is conducted at the centre.⁷² Once a child is admitted to the in-merit procedure and assigned to an accommodation facility in one of the provinces,⁷³ the local Youth Welfare Agency takes over responsibility for legal representation. This task may be delegated to an NGO or to individual lawyers.

The legal representative must be present at the asylum interview, and both the applicant and legal representative must sign the written transcript of the interview. In general, the legal representative has the same rights as if he or she were being interviewed: these are to ask questions, to comment, and to file applications/requests during the interview. However, the adjudicator leads the interview.

Unaccompanied asylum-seeking children must also be assigned a guardian.⁷⁴ This normally occurs after transfer to one of the provinces. The extent and frequency of guardians' contact with their wards varies in practice. A national study on guardianship found that UASC often do not know their guardian personally

⁷⁰ Regulation No. 603/2013 of the European Parliament and the Council of 26 June 2013 (...) (recast), *Official Journal of the European Union*, L 180/1 of 29 June 2013, Article 9 (1).

⁷¹ Younger children should be placed in facilities designated by the youth welfare authorities, or in families with whom they have links.

⁷² Children aged 14 and older have legal capacity to act in certain areas. A legal representative must confirm the asylum applications of children under 14. Their initial interrogation may not take place in the absence of the representative. The initial interrogation of children over 14 may take place in the absence of a legal representative, but not the substantive interviews with the Federal Office. The legal representative may request the repetition of an initial interrogation at which the child was not assisted by counsel (Federal Office Procedure Act, Article 10, paras 3 and 6).

⁷³ According to Article 7 of the 'Basic Welfare Support Agreement', children who need special care will be placed in special facilities and those who can care for themselves may be placed in assisted living arrangements.

⁷⁴ In 2005, Austria's Supreme Court confirmed that the support services for asylum-seeking children did not render a guardian redundant (Judgment Ob209/05V of 19 October 2005). Some lower courts have considered that guardianship requires the child to have his or her habitual domicile in Austria, which explains why guardians are not normally appointed before UASC have been admitted to the asylum procedure.

or understand the guardian's role.⁷⁵ Where the guardian and legal representative are two different people, the guardian does not normally attend the asylum interview.

Age assessment

If an applicant who claims to be a child is unable to furnish adequate documentary evidence of age and there is doubt about the claimed age, the Federal Office may commission radiological examinations. If, as a result of these examinations, the Federal Office determines that an applicant is 18 years or older, the asylum-seeker is informed of this at an interview to which the legal representative is also summoned. Immediately after the respective part of the interview, the applicant loses his or her entitlement to legal representation, as in the first instance procedure, legal counsel is only provided for unaccompanied children, not for adults. If the medical age assessment is inconclusive, the benefit of the doubt applies and the applicant is considered a minor.⁷⁶ Age determination is an administrative act that cannot be appealed against separately, only together with an eventual negative asylum decision.⁷⁷

Family Tracing

The Asylum Act stipulates that the Federal Office should trace the family of unaccompanied minors who are more than 14 years of age, and these children are obliged to cooperate in family tracing, unless tracing is considered not to be in the best interest of the child.⁷⁸ The authority shall help an unaccompanied minor of less than 14 years of age to search for relatives, if requested by the child.

Guidance on children's claims

Three internal instructions of the Federal Office are of particular relevance to unaccompanied children. There is a general instruction on minors affirming that the Convention on the Rights of the Child and the Federal Constitutional Act on Children's Rights guide the interpretation of the Asylum Act and the Federal Office Procedure Act.⁷⁹ It explains that a number of specific rights for asylum-seeking children flow from the best interest principle, including the right to be heard, the right to child-appropriate information, the right to a guardian and the presence of a legal representative at interviews.

Other internal guidelines of the Federal Office for Immigration and Asylum relevant to UASC concern interview procedures and interview quality. Both underline that questions posed to children should be adapted to their cognitive development and maturity.⁸⁰

⁷⁵ Asylkoordination Österreich, 'Implementing the Core Standards for Guardians in Europe. Country Assessment: Austria' (Defence for Children, the Netherlands, 2013), p. 24.

⁷⁶ Federal Office Procedure Act, Article 13, para. 3.

⁷⁷ Austria, Federal Constitutional Court (VfGH), U 2416/2013–8, 3 March 2014.

⁷⁸ Austria: Asylum Act (2005) amended, Article 18, para. 2; and Federal Office Procedure Act, Article 13, para. 6. This is the only specific mention of the child's best interest in the Federal Office Procedure Act.

⁷⁹ Austria, BFA, *General Instruction on Minors*. The Federal Constitutional Act on Children's Rights was adopted in 2011 and incorporates some provisions of the CRC into Austrian Constitutional law. It establishes the best interests of the child as an overarching principle that may be restricted in accordance with the law and as necessary in a democratic society under certain specified conditions.

⁸⁰ Austria, BFA, *Binding Instruction on Interviews: Quality Criteria for Interviews*.

6.2 Italy

Possible outcomes

Asylum applications of unaccompanied children, like those of adults, may result in recognition (or rejection) of refugee status, a grant (or refusal) of subsidiary protection, or the granting of a residence permit on humanitarian grounds.⁸¹ Nearly all cases of unaccompanied asylum-seeking children result in one of these three outcomes.

Italian law provides that unaccompanied children may not be expelled from the country.⁸² Therefore, a residence permit based on a minor's age is given to any child not found eligible for international protection or for a residence permit on humanitarian grounds. The residence permit based on a minor's age can be renewed until the age of 18. The child is also entitled to accommodation and care in a municipal facility for children.⁸³ At the age of 18, the residence authorization based on the minor's age expires, but may be converted into another type of residence permit, for instance for purposes of study or employment.

Application, interviews and decision-making

Asylum-seekers must present themselves to an office of the state police (*questura*) at border points or within Italy to register their application.⁸⁴ Applications made to local police are to be transferred to the *questura*. Depending on its workload and capacity, the *questura* may invite the individual to return at a later date for formal registration of the application. There is no time limit for submission of applications. Unaccompanied children may apply themselves, but, once appointed, a guardian needs to confirm their applications.⁸⁵

At the *questura*, applicants are fingerprinted (if 14 or older) and interviewed by the police about their travel route and the location of family members. Depending on results of the interview and the checking of their fingerprints against Eurodac, the case may be referred to the Dublin Unit of the Ministry of Interior for determination of the state responsible for the application according to the Dublin Regulation.

If the responsibility of Italy to examine an application is established, the application is referred to the competent Territorial Commission for the Recognition of International Protection (TC).⁸⁶ Each TC is appointed by the Minister of Interior and consists of a gender-balanced panel of four members: two represent the Ministry of Interior (a senior official of the prefecture acting as president and a police official), one is from the local municipality, and the other is a member designated by UNHCR. In particular cases, a representative of the Ministry of Foreign Affairs may also attend. The TCs are under the guidance and coordination of the National Commission for the Right to Asylum (NC), which is in charge of the revocation

⁸¹ Article 32 (3), Legislative Decree 25/2008 on the application of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status provides that the Territorial Commission may request the police (*Questura*) to issue a residence permit on humanitarian grounds, based on Article 5 (6) of the immigration law, Legislative Decree 286/1998.

⁸² Article 19 (2), Legislative Decree 286/1998. Exceptions may relate to public order and state security, but require a decree of the Juvenile Court (Articles 13 (3) and 31 (4)).

⁸³ Article 4, Directive of 7 December 2006 on Unaccompanied Foreign Minors seeking Asylum; Article 19, Legislative Decree 286/1998. In practice, accommodation is subject to availability.

⁸⁴ The application is registered by the police on a standard form known as Model C3 (Article 26, Legislative Decree 25/2008). Applicants are entitled to submit additional documentary evidence at any time during the procedure, including after the interview has been completed (Article 31 (1)).

⁸⁵ Article 6 (3) and Article 19 (1), Legislative Decree 25/2008.

⁸⁶ The first instance of the asylum procedure is carried out through a decentralized system composed of ten Territorial Commissions for the Recognition of International Protection (TCs). Article 30 of Law 97/2013 has modified Article 4 (2) of Legislative Decree 25/2008, introducing a new Article 4 (2-bis) according to which a maximum of ten sections of the existing TCs may be created in case of exceptional flows, by Decree of the Ministry of Interior, for a specific period of time as established by the latter. The sections are composed of the deputy members of the TCs and work according to the rules applying to the TCs.

and cessation of refugee status. The NC also trains members of the TCs, monitors asylum applications and trends, and runs the country-of-origin information (COI) documentation centre.⁸⁷

The law requires each applicant to be heard within 30 days of application,⁸⁸ but this is rarely possible in view of the numbers.⁸⁹ Priority is to be given to unaccompanied children and other vulnerable persons.⁹⁰ All unaccompanied children are interviewed, unless the asylum authority considers that a decision to grant refugee status can be taken on the basis of the elements at its disposal, or a public doctor certifies the incapacity of the child to be interviewed.⁹¹

At the time of the research, the law provided that applicants should be interviewed jointly by the four panel members. In reality, due to the number of applications and with the applicant's consent, interviews were usually carried out by a single member, with the applicant being informed that the decision would remain a collegial one. In the case of unaccompanied children, it was frequently the UNHCR member (or another member with relevant experience and qualifications) who carried out the interview. In mid-2014, a new decree-law was adopted prescribing that interviews will be carried out by a single member of the TC, unless the president decides otherwise or the applicant requests a panel interview.⁹²

Upon their request, applicants have the right to be interviewed, if possible, by a person of the same sex. Applicants are to be interviewed with the support of an interpreter speaking the language indicated by the applicant.

The law requires decisions to be taken within three working days of the interview, unless there is a need to collect additional evidence.⁹³ Decisions are taken collegially after discussion among the members of the TC. Most decisions are taken by consensus. If agreement cannot be reached, decisions are taken by majority vote. In the case of a tie, the vote of the president prevails.⁹⁴

Decisions (both positive and negative) must state the reasons in fact and in law, and where relevant, the means to challenge the decision.⁹⁵ The decision is to be communicated in writing in Italian and in the language indicated by the applicant or, when this is not possible, in English, French, Spanish or Arabic.⁹⁶ In decisions reviewed by this research, only the standard operative paragraph was translated (not the reasoning), and only into those four languages.

Legal counsel and guardianship

The government does not provide unaccompanied children with legal counsel in the first instance of the procedure. A guardian is to be appointed for every UASC.

As soon as an unaccompanied child presents an asylum application, the police authority receiving the application temporarily suspends the procedure and informs the juvenile court and the guardianship judge.⁹⁷ The latter should appoint a guardian within 48 hours, but in practice it takes considerably longer.

⁸⁷ Article 5 (1), Legislative Decree 25/2008.

⁸⁸ Article 27 (2), Legislative Decree 25/2008.

⁸⁹ UN High Commissioner for Refugees (UNHCR), *Further Developing Asylum Quality in the EU (FDQ): Summary Project Report*, September 2011, p. 20.

⁹⁰ As defined in Legislative Decree 140/2005, Article 8.

⁹¹ Article 12 (2), Legislative Decree 25/2008.

⁹² Article 5 (6) (b), Legislative Decree 119/2014 of 22 August 2014.

⁹³ Article 27, Legislative Decree 25/2008.

⁹⁴ Article 4, Legislative Decree 25/2008.

⁹⁵ Article 9 (2) and Article 18, Legislative Decree 25/2008. The decisions monitored in this research contained scant reasoning – in general a paragraph or two.

⁹⁶ Article 9 (1) and 10 (4), Legislative Decree 25/2008.

⁹⁷ Article 26 (5), Legislative Decree 25/2008; Article 2 (1), Directive of 7 December 2006 on Unaccompanied Foreign Minors Seeking Asylum (hereafter Directive of 7 December 2006).

Once appointed, the guardian should immediately confirm the child's asylum application to the competent police office.⁹⁸ Only then is the application formally registered, although the child is to be treated as an asylum-seeker from the moment he or she expresses the intention to apply for international protection.⁹⁹ Unaccompanied asylum-seeking children are to be accommodated in residential facilities for children, unless they can be placed with relatives or in foster families. They may not be housed (or detained) in the various facilities used for adult asylum seekers.¹⁰⁰

Unaccompanied children are entitled to the support and assistance of the municipal social services and the guardian (once appointed) for the submission of the application as well as throughout the asylum procedure.¹⁰¹ They are to be interviewed in the presence of the guardian.¹⁰² A lawyer assisting the applicant at his or her own expense or *pro bono* may attend, as may support staff, such as personnel from the reception centre.¹⁰³ At the end of the interview, the interview transcript is orally translated, signed and a copy handed to the applicant.¹⁰⁴

Age assessment

In case of doubt regarding the age of an applicant, an age assessment may be undertaken. This is subject to the consent of the applicant and his or her guardian,¹⁰⁵ and the applicant must be given information about the age assessment process and its consequences with respect to the asylum application.¹⁰⁶ The law specifies that refusal to consent shall not prevent examination of the application. Non-invasive methods¹⁰⁷ are to be used and the assessment should in principle be carried out in a paediatric ward of a public hospital, although in practice this not always the case.¹⁰⁸ If the exact age of the applicant cannot be determined, the benefit of the doubt applies.¹⁰⁹

Family tracing

According to Article 8 (5) of Legislative Decree 140/2005 and 28 (3) of Legislative Decree 251/2007, family tracing is carried out through agreements between the Ministry of Interior and the International Organization for Migration (IOM) or with the Italian Red Cross, in the respect of the child's best interest and confidentiality, and ensuring the child's security and safety. As modified by Legislative Decree 18/2014 transposing the recast EU Qualification Directive, Article 28 (3) provides that family tracing shall be undertaken as soon as possible after granting international protection, if not started earlier. In reality, to date family tracing has been undertaken in very few cases, generally in connection with possible voluntary repatriation.

⁹⁸ Article 26 (5), Legislative Decree 25/2008.

⁹⁹ Article 1 (3) and Article 2 (2), Directive of 7 December 2006.

¹⁰⁰ Article 26 (6), Legislative Decree 25/2008.

¹⁰¹ Article 19 (1), Legislative Decree 25/2008; Article 3 (1), Directive of 7 December 2006.

¹⁰² Article 13.3 of Legislative Decree 25/2008.

¹⁰³ Article 13, Legislative Decree 25/2008.

¹⁰⁴ Article 14, Legislative Decree 25/2008.

¹⁰⁵ Article 19 (2), Legislative Decree 25/2008; Article 349, Code of Criminal Procedure; Ministry of Interior Circular n. 17272/7 of 9 July 2007 on Identification of Minor Migrants (hereafter Circular of 9 July 2007); Article 8 (1), Presidential Decree of 22 September 1988, no. 448 on the approval of provisions concerning criminal proceedings against minor defendants (hereafter PD 448/88).

¹⁰⁶ Article 19 (3), Legislative Decree 25/2008.

¹⁰⁷ Article 19 (2), Legislative Decree 25/2008.

¹⁰⁸ Circular of 9 July 2007.

¹⁰⁹ Article 19 (2), Legislative Decree 25/2008; Article 8 (2), DPR 448/88; circular of 9 July 2007.

Guidance on children's claims

The National Commission has not issued any specific instructions on how claims of unaccompanied children should be handled, except for a broad section on international protection for unaccompanied children in the Commission's Guidelines for Territorial Commissions (prepared in 2004). That text recalls UNHCR's 1997 *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.

6.3 The Netherlands

Possible outcomes

For unaccompanied children (as for adults), the asylum procedure can result in recognition of refugee status, subsidiary protection, or rejection of the application. In the past there was a special residence permit for unaccompanied minors, but this was abolished in mid-2013. However, an unaccompanied child who is under 15 years of age at the time of application, and whose application is rejected, may qualify for a so-called 'no fault' permit to remain in the country for an initial period of three years, if no adequate reception arrangements can be identified for the child in the country of origin, and if the child is not considered to be at fault for this.¹¹⁰

Application, interviews and decision-making

Unaccompanied children may apply for asylum at the border (airport) or inland. The authority responsible for the first instance asylum procedure is the Immigration and Naturalization Service (IND). For UASC, the process is a centralized one. Their applications are registered at the IND regional office at Ter Apel.¹¹¹ Older children are then sent to a reception facility near the IND's application centre in Den Bosch, where all UASC claims are processed. Children aged between 12 and 15 are to be placed in small-scale group housing. Younger children, and those who are particularly vulnerable, are placed with foster families.¹¹² Children who may be victims of human trafficking are housed separately.

Children's cases, like those of adults, are in principle to be channelled into the 'general' (or standard) first instance procedure, which should be completed in eight working days, following a short 'rest and preparation' period.

The steps in the 'general procedure' are:¹¹³

Day 1: Initial interview by IND (on identity, nationality, itinerary, and documents).

Day 2: Applicant prepares for substantive interview (with legal representative).

Day 3: Substantive interview by IND, and receipt by applicant of transcript of the interview.

Day 4: Applicant (with legal representative) corrects/amends the transcript.

Day 5: Applicant receives the intended decision from the IND.

Day 6: Applicant (with legal representative) provides written response to intended decision.

Day 7: Preparation of decision by IND.

Day 8: IND presents decision to applicant.

¹¹⁰ Decision of the State Secretary for Security and Justice, of 7 May 2013, nr. WBV 2013/9, amending the Aliens Circular of 2000, *Official Gazette*, nr. 13143, 22 May 2013 (part E, relating to Aliens Circular B8/6).

¹¹¹ Aliens Circular C1/21.

¹¹² Aliens Circular C1/2.1; letter of the Minister of Justice and Security to the Lower House of Parliament, 19 December 2013, TK 27062, nr. 91, at 8 and 9.

¹¹³ The steps follow from Article 3.112–3.114 Aliens Decree.

If a decision cannot be made in this time period, the application is referred to the ‘extended’ procedure.¹¹⁴ In the ‘extended’ procedure, the case should be processed within six months, but that can be prolonged by a further six months,¹¹⁵ or by one year, if decision-making on a specific country of origin has been suspended because of the situation there or because of a high number of applicants.¹¹⁶

The rest and preparation period normally lasts six days, but in the case of unaccompanied child applicants it is longer, usually at least three weeks.¹¹⁷ The guardianship agency Nidos may submit a request for extension.¹¹⁸ During the rest and preparation period the child receives information on the asylum procedure, including from the non-governmental Dutch Council for Refugees, and undergoes medical screening by an independent bureau for medical advice (Medifirst).¹¹⁹ This screening includes an assessment of the ability of the asylum-seeker to be interviewed in the light of his or her medical condition. During this period the police also collect documents and take fingerprints and photographs of all children aged six and older.¹²⁰

Specialist IND staff interview children under 12; in view of their age, the interviews may be limited in scope.¹²¹ The IND staff members who interview the children aged 12 and older may come from the unit that specializes in children’s claims, or they may be other staff members who have received training in children’s claims.

Detailed reasons are set out only in decisions that deny both refugee status and subsidiary protection. Positive decisions – those recognizing refugee status or granting subsidiary protection – do not need to be motivated.

In all the cases reviewed in this research, the interviewer and the decision-maker were two different individuals.

Legal counsel and guardianship

The Dutch Civil Code requires that children have a legal guardian to look after their best interests.¹²² A guardian is therefore appointed for all UASC. Guardianship is provided through the Nidos Foundation, which has an agreement with the Ministry of Security and Justice for this purpose. Guardians are child welfare professionals. Each guardian may be responsible for a large number of children, limiting the degree of contact that is possible in practice.

All UASC are also entitled to legal counsel in the asylum procedure. This is provided by the government in the form of lawyers who work in the reception centre. In addition, volunteers from the Dutch Refugee Council provide information on the procedure and may attend interviews. Interpreters at the asylum interview are provided by the IND, and interpreters for lawyers through the Legal Aid Board.

¹¹⁴ Article 3.108a Aliens Decree.

¹¹⁵ Article 42 Aliens Act.

¹¹⁶ Article 43 Aliens Act.

¹¹⁷ This is not laid down in law but in a Letter of the Minister for Immigration, Integration and Asylum to the Lower House of Parliament, TK 2011–2012, 27 062, nr. 75, June 22, 2012. In that letter, the minister declined formally to extend the rest and preparation period for unaccompanied children beyond three weeks, noting that the guardianship agency Nidos may submit a request for extension.

¹¹⁸ Minister of Justice, ‘Decision on the Acceptance of Legal Persons’, 12 January 2005, nr. 5328240/04/DJJ. Nidos is a quasi-autonomous NGO (funded by the government) that executes governmental tasks. See: www.nidos.nl

¹¹⁹ Article 3.109 (2) and (5) Aliens Decree.

¹²⁰ Article 106a Aliens Act; Article 3.109 Aliens Decree; Aliens Circular B1/3.1. The Eurodac Regulation requires states to take fingerprints of applicants who are at least 14 years of age, but does not prohibit taking fingerprints from younger applicants.

¹²¹ Aliens Decree Article 3.113 (5) (b); Aliens Circular C1/2.5. It is the practice of the IND not to interview children younger than six.

¹²² Civil Code 1:253r (*Burgerlijk Wetboek*).

At the time of registration, the IND interviews the child to determine his or her travel route and whether he or she has any family in a country participating in the Dublin Regulation. At this stage the child has not necessarily received information about the asylum procedure or been appointed a legal guardian or legal representative. The interview on the first day of the eight-day procedure is used to confirm information received at this registration interview.

Age assessment

The IND will propose a medical age assessment if the applicant cannot provide documentary evidence or otherwise convince the IND of his or her claimed age, and the result of an age assessment is considered relevant for the asylum procedure.¹²³ The age assessment, for which the consent of the applicant is required, can be conducted during the rest and preparation period or at a later stage. It is not offered if the IND considers it obvious that the applicant is of age.

Family tracing

The tracing of family members outside the Dublin area is not undertaken until after a first instance decision has been issued. Tracing relatives within the Dublin area may be undertaken as part of the investigation into the state responsible for the child's asylum application, under the terms of the Dublin Regulation. It only takes place if the child mentions the presence of a family member in a particular country, and is then limited to that country.

Guidance on children's claims

Guidance on interviewing children under the age of 12 is provided in the Aliens Circular and in a specific instruction on the subject.¹²⁴ Apart from this guidance, the extension of the rest and preparation period, and provisions for age assessment, there is no specific procedural framework for interviewing and assessing children's claims. The Aliens Circular states that the IND will take paragraphs 213 to 219 of the UNHCR Handbook (concerning unaccompanied minors) into account.¹²⁵

¹²³ Aliens Circular 2000 C1/2.2. The circular says the child must 'prove' (*aantonen*) his or her age with documents, or otherwise make his or her claimed age plausible (*aannemelijk maken*).

¹²⁴ Aliens Circular 2010 C.1/2.5 and Protocol 'horen onder 12' (interviewing under the age of 12).

¹²⁵ Aliens Circular 2010 C.2/3.2

6.4 Sweden

Possible outcomes

The possible outcomes of the asylum process for an unaccompanied child in Sweden are as follows – recognition as a refugee or beneficiary of subsidiary protection, permission to remain based on ‘particularly distressing circumstances’, or rejection.

Application, interviews and decision-making

Unaccompanied children may apply for asylum at the border or after entering the country, at one of the application units of the Swedish Migration Board (SMB). The SMB is responsible for the first instance of the asylum procedure. Cases of UASC are to be prioritized in the asylum procedure. An unaccompanied child’s claim is in principle to be processed within three months from application to first instance decision.¹²⁶

At the time of registration of the application, the SMB conducts an initial screening interview with the help of an interpreter, at which information is collected about the child’s country of origin, family members, health, educational level, marital status and if the child travelled to Sweden alone. The child is given information about the asylum procedure and reception arrangements and asked if he or she has any preferences regarding the gender of any parties involved (SMB staff, legal counsel or interpreter). The caseworker makes an initial assessment of the child’s age, and documents this in an internal note. Children above the age of 14 are photographed and their fingerprints taken.

Municipalities are responsible for the accommodation of UASC. The SMB will assign responsibility to a municipality to arrange for a child’s accommodation. Before doing so, the SMB will investigate if the child has any relatives in Sweden and, if so, assign the child to that municipality. The municipality to which the child is assigned is responsible for the child’s welfare, including any special needs.¹²⁷

Once the guardian and the legal counsel have been appointed, the child and his or her representatives will be called to a meeting at the SMB Reception Unit. At the reception meeting, the child (most often together with the guardian only) will be further informed about the asylum procedure and have an opportunity to ask questions. The SMB will update the information given at the Application Unit about the child’s family members and inform the child about family tracing. The child will also be asked about identity documents, the whereabouts of family members, places of former residence, his or her living situation and schooling in Sweden and in the country of origin, and any health needs. As this meeting normally precedes the asylum interview, the child may be invited to submit further documents at the asylum interview.

There is no minimum age for interviewing a child. A substantive interview will take place unless this is considered inappropriate. Age and maturity are to be considered. At the interview, both the lawyer and the guardian are normally present. Usually, there will be both an interviewer and a note-taker from the SMB. The interviewer will be from an SMB unit that specializes in children’s claims. Once the asylum interview has been completed and if no additional steps are needed (such language analysis, medical age assessments, or complementary interview), the legal counsel will summon the child and the guardian to go through the transcript of the asylum interview and compile a written response containing any additional information, which the legal counsel will send to the SMB.

¹²⁶ Swedish Migration Board, *Annual Report 2012*. With high numbers of applicants, as in 2014, it is not always possible to stay within this time-frame.

¹²⁷ Government Bill 2012/13:162 – Municipal reception of unaccompanied children (30 May 2012) and Social Services Act, Chapter 2a, section 1.

The interviewer drafts a proposal for a decision, which is handed over to a SMB decision-maker, the person legally responsible for the decision. The decision-maker has the final say on the decision, as well as its reasoning. Both the interviewer and the decision-maker are named in the final decision.

Once a decision is taken, the child, together with his or her guardian, will be summoned to the Reception Unit to be notified of the decision and, if the outcome is negative, to be informed of the options (to accept the decision or to lodge an appeal).¹²⁸ However, if the applicant's age has been assessed and the applicant is considered an adult in the decision, the guardian will be dismissed from the assignment and will not attend this meeting.

Legal counsel and guardianship

Upon registration of a UASC's claim, the SMB's Application Unit will appoint a legal counsel, including, since 2014, if the case is assigned to the Dublin procedure.¹²⁹ The SMB manual stipulates that the legal counsel should have the relevant knowledge and experience to represent vulnerable people in the asylum procedure. The legal counsel should always be present at the asylum interview.¹³⁰

The SMB will also send a request to the chief guardian (*överförmyndaren*) in the municipality where the child will be staying to appoint a guardian for the child. A guardian should be appointed as soon as possible but no time-limit is specified in law.¹³¹ The guardian needs to confirm the child's asylum application, since a child is not considered to have necessary legal capacity.¹³² Confirmation of the child's application can be given by the legal counsel, if a guardian has not yet been appointed.¹³³

The guardian substitutes for the child's parents in matters such as education, health care and legal issues (although not the child's representation in the asylum procedure).¹³⁴ According to the Aliens Ordinance Chapter 8, section 9 b, the guardian should be called to attend the oral proceedings at the SMB, which normally consist of the child's initial meeting at the Reception Unit, the asylum interview and when the child is notified of the decision.

Age assessment

If the SMB has doubts about a child's age, a medical age assessment will be proposed. This involves an x-ray of the child's wrist or a dental x-ray. The SMB's judicial position on age assessment states that the board should perform an overall assessment using all available information.¹³⁵ If the child's age is adjusted, this is done in the SMB's decision on the case.

¹²⁸ This meeting does not necessarily take place in the event of a positive decision.

¹²⁹ Swedish Migration Board, Judicial position on guardianship and counsel for unaccompanied children in cases where the Dublin Regulation applies, RCI 07/2014 (14 January 2014).

¹³⁰ Swedish Migration Board, *Migrationsverkets handbok för migrationsärenden* (hereafter SMB, *Manual for Migration Cases*), section 37.2; Government Bill 1996/97:25 – Swedish Migration Policy in Global Perspective, (20 September 1996), at 263; Government of Sweden, *Official Report: Asylum Procedure – The Implementation of the Asylum Procedure Directive in Swedish Law*, (SOU) 2006.

¹³¹ Parliament of Sweden, Act on Guardianship for Unaccompanied Children), (SFS 2005:429, 2005), section 3.

¹³² Parliament of Sweden, Aliens Act (SFS 2005:716, 2005), Chapter 18, section 4.

¹³³ Ibid., section 3. Once a guardian is appointed, the legal counsel can no longer deputize for the guardian; the guardian has to give power of attorney for the legal counsel to become the legal representative of the child in the asylum procedure.

¹³⁴ Government Bill 2004/05:136 – Enhanced protection for unaccompanied minors, p. 29.

¹³⁵ Swedish Migration Board, Judicial Position on age assessment, RCI 19/2012 (5 June 2012).

Family tracing

The SMB begins efforts to trace parents or other caregivers of the child as soon as possible after an asylum application is made.¹³⁶

Guidance on children's claims

In 2011, the director general of the Swedish Migration Board issued a guiding document for SMB staff entitled 'Policy on Children'.¹³⁷ The Swedish ombudsman for children was involved in the formulation of this policy, which aims at incorporating a children's rights perspective in all actions of the board. The focus is on ensuring that the best interests of the child are considered in all decisions and actions, and that the right of the child to be heard and to participate is respected. This is to be ensured by conducting a 'child impact analysis' in the context of all decisions concerning children.¹³⁸

Operational guidance on the child impact analysis and other aspects of children's claims is contained in the SMB's manual, a practical but voluminous tool for staff that is regularly updated. Issues pertaining to children are addressed throughout the manual but there are four chapters specifically concerning children.¹³⁹ The manual outlines that the child impact analysis aims to ensure a systematic approach to gathering the relevant facts and assessing the consequences of a potential decisions for the child. Checklists are provided so that staff members can make sure that their child impact analysis is complete.

The SMB has also issued a number of 'judicial positions' that are relevant to the claims of unaccompanied children. Judicial positions are guiding documents – that is general recommendations on how to interpret and apply legislation. They are non-binding but are expected to be followed. As of mid-2014, the judicial positions dealing with issues arising from children's claims included the judicial position on age assessment,¹⁴⁰ the judicial position concerning guardians and public counsel for UASC in Dublin claims,¹⁴¹ and the judicial position on the enforcement of decisions concerning UASC.¹⁴² There is also a specific paragraph about handling child claims in the judicial position on establishing identity in asylum claims.¹⁴³

¹³⁶ Ordinance on Reception of Asylum-seekers and Others, Section 2 (d); Judicial Position on Enforcement of Decisions on Unaccompanied Children, RCI 10/2013 (12 June 2013).

¹³⁷ SMB, 'Policy on Children', GDA 6/2011.

¹³⁸ The requirement for the SMB to analyse the consequences for a child of an action or decision is contained in a government ordinance containing instructions for the SMB (2007:996, section 2.9).

¹³⁹ These chapters address general issues concerning asylum-seeking children; interviewing children; age assessments; and assessment of the protection of the needs of children.

¹⁴⁰ SMB, Judicial position on age assessment, RCI 19/2012 (5 June 2012).

¹⁴¹ SMB, Judicial position on guardianship and public counsel for unaccompanied children in cases where the Dublin Regulation applies, RCI 07/2014 (14 January 2014).

¹⁴² SMB, Judicial position on the enforcement of decisions concerning unaccompanied children, RCI 10/2013 (12 June 2013).

¹⁴³ SMB, Judicial position on establishing identity in asylum cases, RCI 08/2013 (31 May 2013).

CHAPTER 3

The Importance of a Multi-disciplinary Approach

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1. Introduction

The asylum process is a complex one and the decisions to be made have significant ramifications. It is a process designed with adults in mind. The EU Qualification Directive stipulates that applications for international protection must be assessed on an individual basis, taking into account “*the individual position and personal circumstances of the applicant*”.¹ What does this actually mean in the case of a child? How can lessons learned in other fields help interviewers and decision-makers understand what factors affect the ability of children to present their claims, and their own ability to examine these claims?

The *Beyond Proof* report explains that credibility assessment needs to be informed by disciplines going well beyond refugee law, including psychology and neurobiology as well as anthropology, sociology, and gender and cultural studies.² Each of these fields offers insight into how individuals behave and/or how human memory works. *Beyond Proof* also makes clear that credibility assessment is the result of *interaction* between the asylum-seeker and the determining authority, and is therefore heavily influenced by the state of mind, beliefs and assumptions of the decision-maker and, where this is not the same person, the interviewer.

In this chapter, it is argued that a multidisciplinary approach is especially important when considering children’s claims. Children are not simply miniature adults.³ Many elements, including stage of development, mental health, background and personal characteristics, affect a child’s ability to remember and recount past experiences. The vulnerability and developmental differences of child claimants place added responsibility on decision-makers.

As explained in Chapter 2, most unaccompanied and separated children who seek asylum in the EU are teenagers, and the focus of this chapter is accordingly on adolescents. Sometimes, because of the rapid physical development and changes in thought processes, memory, risk-taking, and emotional understanding that occur throughout adolescence, a distinction is made between younger (approximately 12–14 years) and older (approximately 15–17 years) adolescents.

¹ Qualification Directive (recast), Article 4 (3) c.

² UNHCR, *Beyond Proof*, p. 56.

³ J. Bhabha and W. Young, ‘Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New US Guidelines’, *International Journal of Refugee Law*, vol. 11, no. 1, 1999, pp. 84–125.

2. Adolescence

The Qualification and Asylum Procedures Directives underline the need to consider the age, maturity and social development of an asylum-seeking child.⁴ UNHCR's guidelines on child asylum claims similarly state that decision-makers should consider the child's stage of development.⁵ Canada's guidelines on child refugee claimants, which were the first of their kind (issued in 1996), urge adjudicators to take into account "the age and mental development of the child both at the time of the hearing and at the time of the events."⁶

Interviewers and decision-makers faced with adolescent asylum-seekers frequently grapple with what this advice means in practice. Austrian guidance cautions that "*This does not mean under all circumstances that every minor is to be treated like a small child. It is possible that an unaccompanied minor's mental development stage can be compared to that of an adult or exceed that of some adults.*"⁷

Adolescents are nevertheless entitled to enjoy the full range of children's rights. That UNICEF devoted its 2011 *State of the World's Children* report to adolescents and that the UN Committee on the Rights of the Child has now decided to produce a General Comment on Adolescents signal recognition of the vulnerability of adolescents and the risks they face in many circumstances.

In this chapter it is explained that although there may be apparent similarities between adolescents and adults, such as size and physical strength, there are also many psychological differences. We look first at the main processes of adolescent psychological development before exploring some of the linkages between psychological development and credibility.

2.1 Not a 'real' child?

In the cross-cultural environment of the asylum procedure, the decision-maker may consider the child more or less mature, depending on the trajectory of the child and on the decision-maker's own views about children and/or experience of child and adolescent development. In Western cultures, childhood is associated with innocence and spontaneity. This may be at odds with the way an asylum-seeking child presents, and adjudicators may not see their idea of childhood reflected in asylum-seeking children.⁸

The research noted that adjudicators regularly regarded asylum-seeking children as more grown-up than local children, without any reference to the basis for these statements.⁹ In a decision concerning a 16-year-old boy from Afghanistan one adjudicator noted without further explanation that a "*minor age means*

⁴ Qualification Directive (recast), Recital 18; Asylum Procedures Directive (recast), Recital 33.

⁵ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1A (2) and 1 (F) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 22 September 2009, HCR/GIP/09/08, para. 4 (hereafter UNHCR, *Guidelines on Child Asylum Claims*).

⁶ Immigration and Refugee Board of Canada, *Chairperson's Guideline No. 3, Child Refugee Claimants: Procedural and Evidentiary Issues*, 1996.

⁷ Austria, BFA, *Binding Instruction on Interviews*, p. 50.

⁸ H. Crawley, "Asexual, Apolitical Beings": The Interpretation of Children's Identities and Experiences in the UK Asylum System', *Journal of Ethnic and Migration Studies*, vol. 37, no. 8, September 2011, pp. 1171–84 at p. 1181.

⁹ Austria's Federal Administrative Court has cautioned decision-makers against making 'unsubstantiated and speculative' assumptions about what minor age means in other countries (BvWG, judgment L 516 2001863-1 of 16 April 2004 at 3.2.11.3).

something completely different in your country".¹⁰ In many of the decisions audited, the decision-maker described the child applicant as "young, healthy and employable".

There is little doubt that unaccompanied asylum-seeking children challenge adjudicators' ideas of what constitutes childhood. One reason for this may be that, in Western societies, leaving the parental home is usually seen as a sign of the transition to adulthood.¹¹ In a decision concerning a 16-year-old boy from Pakistan, an adjudicator noted that "*the circumstances of your long and exhausting travel to Europe further indicate a certain self-sufficiency and maturity*".¹² Due to their atypical experiences, asylum-seeking children may indeed be advanced in some skills (such as the ability to care for themselves or others) yet delayed in others (for instance, literacy and numeracy), often as a result of limited formal education. In other words, they may display both resilience and vulnerability.

The perception that an asylum-seeking child is not a 'real' child may lead interviewers and decision-makers to have unrealistic expectations about what, and how, the child should be able to tell them. It is important to be aware that unaccompanied asylum-seeking children are likely to present with uneven development and may not fit the European norm for their age.¹³

2.2 Defining adolescence

Adolescence is usually defined as the phase of development between childhood and adulthood. It is often said that adolescence "*begins in biology and ends in culture*".¹⁴ This is because there is agreement that the onset of adolescence is related to pubertal development, but there is great variation in how adulthood is defined and when it is considered to be achieved, often depending on a country's legal and social organization, family structure and economy.

The age of majority, which signals the start of adulthood as declared in law, also varies from one country to another. In most countries it is set at 18 years, but in some adult rights are assigned at 20 or 21, and in a handful of others, as early as 15, 16 or 17 years. It is recalled that the Convention on the Rights of the Child defines childhood as being the period up to age 18, "*unless under the law applicable to the child, majority is attained earlier*".¹⁵

For practical reasons, legal and administrative systems use chronological age, mostly the age of 18, to define the start of adulthood, even though there is little psychological or neurological evidence that the age of 18 necessarily signals full maturation and the achievement of adult capacities.¹⁶ Recent research shows not only that "*adolescence is a period of significant changes in brain structure and function*", but that "*changes in brain anatomy and activity take place far longer into development than had been previously thought*".¹⁷ The process of neurological, physical and emotional maturation that is the result of interaction between individual changes and environmental influences is highly variable and can continue well past the age of 18. For example, the prefrontal cortex, the part of the brain responsible for organizing attention, inhibiting

¹⁰ D/016/AFG/M/16.

¹¹ F. Prior, *A Day in the Life: An Exploration of Young Asylum Seekers' and Refugees' Perceptions of Self and Identity*, MA Dissertation, University of Sussex, 2012–2013, pp. 12 and 27.

¹² D/10/PAK/M/16.

¹³ There may also be cases of persons over the age of 18 where procedural safeguards and special considerations for children are needed because the person's psychological maturity remains comparable to that of a child. See UNHCR, *Guidelines on Child Asylum Claims*, para. 7.

¹⁴ J. Conger and A. Petersen, *Adolescence and Youth: Psychological Development in a Changing World*, New York: Harper & Row, 1984.

¹⁵ *Convention on the Rights of the Child*, Article 1.

¹⁶ S. Johnson, R. Blum and J. Giedd, 'Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy', *Journal of Adolescent Health*, vol. 45, no. 3, 2009, pp. 216–21.

¹⁷ L. Steinberg, 'Should the Science of Adolescent Brain Development Inform Public Policy?' *Issues in Science and Technology*, Spring 2012, pp. 67–78 at 67.

behaviour, and focusing thoughts does not usually fully develop until the mid-twenties. Other parts of the brain, such as those connected to long-term memory, have different developmental trajectories. In short, as the sections below illustrate, adjudicators should be wary of expecting adolescents to think and act like adults, even if they look like them.

2.3 Development during adolescence

Growth and maturation take place from infancy into early adulthood, including during adolescence. The onset of puberty brings physical development including changes in height and weight, development of sexual characteristics, and brain maturation. The brain development, especially of the frontal lobes, underpins greater forward planning, abstract thinking, understanding of self and others, and language development.¹⁸

Adolescence is also a time of great vulnerability to external stressors.¹⁹ The context in which children grow up, and their relationships to caregivers, influence their development. Separation from caregivers, trauma and relocation may all have an impact on an individual's optimal development and on his or her memories of past experiences.²⁰

The areas of development described below are what current research indicates to be common changes during adolescence.²¹ However, adjudicators need to be aware that the interaction between physical changes and environmental influences is what shapes us into individuals. This means that there is no simple formula for understanding adolescent development and behaviour.

2.4 Identity development

Identity development is a central aspect of adolescence. Identity refers to our sense of who we are as individuals. Adolescents are typically driven by an emerging ability to consider themselves from an external perspective and by reduced dependence on their family. An established sense of personal identity (namely knowing yourself and your own values) usually only emerges in late adolescence.²² Prior to this, adolescents are more susceptible to the influence of others, whether peers or those in positions of authority.

There are many theories and a large body of research about identity development that are beyond the scope of this report. What is important to recognize is that identity development is likely to be particularly challenging for unaccompanied asylum-seeking adolescents. This is because of separation from their parents and other family members, sometimes at an early age and under difficult circumstances,²³ and because they are likely to experience cultural identity conflict – in other words, a conflict between the values of their country of origin and those of the host country.²⁴

¹⁸ S.-J. Blakemore and S. Choudhury, 'Development of the Adolescent Brain: Implications for Executive Function and Social Cognition', *Journal of Child Psychology and Psychiatry*, vol. 47, no. 3–4, 2006, pp. 296–312.

¹⁹ J. Giedd, M. Keshavan and T. Paus, 'Why Do Many Psychiatric Disorders Emerge During Adolescence?', *National Review of Neuroscience*, vol. 9, no. 12, 2008, pp. 947–57.

²⁰ G. Bagerud and A. Melinder, 'Maltreated Children's Memory of Stressful Removals from their Biological Parents', *Applied Cognitive Psychology*, vol. 26, 2012, pp. 261–70.

²¹ Most of these studies were conducted in Western countries. More research is needed to confirm the extent to which they can be generalized to other cultures.

²² Ciccio, A., P. Meulenbroek and L. S. Turkstra, 'Adolescent Brain and Cognitive Developments: Implications for Clinical Assessment in Traumatic Brain Injury', *Topics in Language Disorders*, vol. 29, no. 3, 2009, pp. 249–65.

²³ M. Benson, P. Harris and C. Rogers, 'Identity Consequences of Attachment to Mothers and Fathers among Late Adolescents', *Journal of Research on Adolescence*, vol. 2, no. 3, 1992, pp. 187–204.

²⁴ R. Kohli and R. Mather, 'Promoting Psychosocial Well-being in Unaccompanied Asylum Seeking Young People in the United Kingdom', *Child and Family Social Work*, vol. 8, 2003, pp. 201–12.

2.5 Changes in thinking processes

Although brain maturation continues into early adulthood (up until around the mid-twenties), there are particularly marked changes between early and late adolescence. Late adolescents acquire skills that enable them to take on different perspectives and they may start to question things more. A larger vocabulary, an ability to understand the structure of language, and increased eloquence are often observed. However, these skills are reliant on an environment that will stimulate them and, without that, they are unlikely to develop to the same degree.²⁵

Psychological research indicates that early adolescents tend to think in concrete terms, basing their thoughts on their own experiences and using inductive reasoning, for instance, *“the authorities have exploited me and my family in the past, so all people in authority will do this.”* As the capacity to think abstractly develops, older adolescents may begin to draw on hypothetical principles and deductive reasoning, which enables them to consider other perspectives. For instance, *“although I have experienced exploitative authorities in my home country, the rules and values of the authorities in this country are different.”*²⁶ In one case observed in this research, a 16-year-old boy showed that he was indeed able to base his reasoning on what he had already learned about his host country:

*“I am ashamed to tell about my problems and at first I found it difficult to tell about these to my female lawyer. But then I heard from other boys in the centre that shame does not play a role here, and therefore I have no preference for a male or a female interviewer.”*²⁷

This ability is quite sophisticated and cannot be simply presumed, particularly as deductive and hypothetical reasoning skills are more likely to be developed if the child has had the benefit of formal education. Also, they tend to be valued and encouraged more in Western education systems. Furthermore, the interactions and relationships a child has with caregivers also shape cognitive development.²⁸

Young adolescents are also more likely than older adolescents to adhere to rules and social moral codes, regardless of the potential consequences. They are more likely to obey an authority figure irrespective of the outcome. As adolescents develop new ways of thinking, they start to base their decisions on their own values.²⁹ However, this capacity develops differently in different individuals and between one context and another, and there are no hard and fast rules. This can help to explain why (in one case) a 12-year-old girl from a traditional, patriarchal society was able to refuse to marry the much older man to whom her father had promised her.³⁰ In another case, a 15-year-old girl was unable to speak up against her smuggler and insist on holding onto her travel document, even though she had reached the safety of a European country.³¹

²⁵ Ciccio, A., P. Meulenbroek and L. S. Turkstra, ‘Adolescent Brain and Cognitive Developments: Implications for Clinical Assessment in Traumatic Brain Injury’, *Topics in Language Disorders*, vol.2 9, no. 3, 2009, pp. 249–65.

²⁶ L. Steinberg, ‘Cognitive and Affective Development in Adolescence’, *Trends in Cognitive Sciences*, vol. 9, no. 2, 2005, pp. 69–74.

²⁷ D/170/AFG/M/16.

²⁸ G. Goodman and A. Melinder, ‘The Development of Autobiographical Memory: A New Model’, in S. Magnussen and T. Helstrup (eds.), *Everyday Memory*, Hove: Psychology Press, 2007, pp. 109–34.

²⁹ L. Kohlberg, ‘Continuities and Discontinuities in Childhood and Adult Moral Development’, *Human Development*, vol. 12, 1969, pp. 93–120.

³⁰ D/171/AFG/F/16.

³¹ D/167/CHN/F/15.

2.6 Emotions and risk-taking

Most parents of adolescents recognize that teenagers are rarely able to control their responses and often act or speak before thinking. As a rule, adolescents are more susceptible to social and emotional influences than adults. This can lead them to make poor decisions at a particular moment, based on their emotions rather than on consideration of the consequences.³²

Some studies have noted that the ability to process emotional reactions in oneself and in others is reduced during early adolescence.³³ If an adolescent is feeling angry or anxious, the ability to reflect on his or her own mental state, or on that of another person, diminishes. This can result in difficulty managing emotional responses in stressful situations such as an asylum interview. In one case, for instance, a boy told the interviewer that he did not want to speak about his brother's death. When he was nonetheless asked about this, he grew angry and exclaimed: "*No irritating questions!*"³⁴ Such an emotional response could signal a struggle to remain composed during the interview, which may in turn signal underlying trauma.

Sometimes tensions arising at interview or cheeky responses may simply be the result of an adolescent's lack of emotional control, and not signs of trauma or intent to deceive. One stakeholder gave the example of a teenage boy who replied to a question by saying: "*I'm not a computer!*"³⁵ Several stakeholders commented positively on the effort adolescent asylum-seekers generally make to keep their emotions in check, noting that when interviewers encounter pubertal behaviour, they try not to let it influence their assessment, but look for ways of encouraging cooperation.³⁶

Older adolescents are usually progressively more able to make links between behaviour and thoughts or emotions, and to adjust their responses accordingly.³⁷ In general, while their skills are developing, adolescents may come across as unpredictable, sometimes able to think about others and control their emotional reactions, yet unable to do so at other times. It is only later (17–20 years) that adolescents master the ability to regulate their emotions, employ more rational thought, plan for the future, and evaluate risks and rewards.³⁸

The combination of partially developed impulse control, emotion regulation and increased sensitivity to reward during adolescence can increase the likelihood of acting impulsively before weighing up the consequences.³⁹ Adolescents are more likely to take risks, as they are less able to pause and assess a situation before making a decision.⁴⁰ This highlights the danger for decision-makers of judging adolescents' actions based on what they themselves would have done in any particular situation.

³² L. Steinberg, 'Cognitive and Affective Development in Adolescence', *Trends in Cognitive Sciences*, vol. 9, no. 2, 2005, pp. 69–74.; S. J. Blakemore and T. W. Robbins, 'Decision-Making in the Adolescent Brain', *Nature Neuroscience*, vol. 15, no. 9, 2012, pp. 1184–91.

³³ S. Burnett, C. Sebastian, K. Cohen Kadosh and S.-J. Blakemore, 'The Social Brain in Adolescence: Evidence from Functional Magnetic Resonance Imaging and Behavioural Studies', *Neuroscience & Biobehavioral Reviews*, vol. 35, 2011, pp. 1654–64.

³⁴ D/151/EGY/M/16.

³⁵ SH 80.

³⁶ SH 78, SH 79, SH 80, SH 85, SH 87, SH 88.

³⁷ P. Fonagy, G. Gergeley, E. Jurist and M. Target, *Affect Regulation, Mentalization, and the Development of the Self*, New York: Other Press, 2002.

³⁸ S.-J. Blakemore and T. W. Robbins, 'Decision-Making in the Adolescent Brain', *Nature Neuroscience*, vol. 15, no. 9, 2012, pp. 1184–91; L. Mayes, 'Arousal Regulation, Emotional Flexibility, Medial Amygdala Function, and the Impact of Early Experience', *Annals of the New York Academy of Sciences*, vol. 1094, no. 1, 2006, pp. 178–92.

³⁹ S.-J. Blakemore and S. Choudhury, 'Development of the Adolescent Brain: Implications for Executive Function and Social Cognition', *Journal of Child Psychology and Psychiatry*, vol. 47, no. 3–4, 2006, pp. 296–312.

⁴⁰ S. Johnson, R. Blum and J. Giedd, 'Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy', *Journal of Adolescent Health*, vol. 45, no. 3, 2009, pp. 216–21.

3. Mental health

Having been forced to find ways of surviving without family protection, many displaced children are very resilient. Nevertheless, they carry a heightened risk of developing mental health problems because of the stressors to which they have been exposed. These include experiences in their home country (such as war, disruption of community life, or the deaths of family members) as well as during their stay in countries of transit, where many had limited access to food, water, shelter and health care, or faced sexual exploitation and other abuses.

An extensive review of studies conducted in industrialized countries found that post-traumatic stress disorder was ten times higher among refugee children than among their non-refugee peers.⁴¹ One study suggests that unaccompanied migrant children are five times more likely to have emotional difficulties than those who are accompanied by a caregiver.⁴²

Common mental health problems among refugee and asylum-seeking children include post-traumatic stress disorder, psychosis, grief, sleep disturbances, self-harm, suicidal tendencies, and aggression.⁴³ Depression and anxiety are also common among asylum-seeking adolescents, and frequently occur alongside post-traumatic stress disorder.⁴⁴ These difficulties often go undetected through a lack of access to care, the reluctance to seek help on the part of the adolescent who is afraid of the stigma, or because the child tends only to report somatic symptoms and so is not referred to a mental health professional.⁴⁵

In addition to mental health conditions arising from their experiences, young asylum-seekers, like other children, may have pre-existing developmental difficulties such as learning difficulties, autistic spectrum disorder or attention deficit disorders. All these can influence their understanding of events, adjustment, and ability to communicate their experiences.⁴⁶

The sustained absence of any parental figure further increases the vulnerability of unaccompanied and separated children to mental health problems.⁴⁷ Even after arrival in Europe, these children have to cope with uncertainty about their future legal status and anxiety about family members left behind, and in some cases they have to do this with little social support and with high levels of exposure to discrimination and hostility.

Interviewers and decision-makers need to be conscious of the very high incidence of mental health problems among unaccompanied asylum-seeking children, and of how these problems can affect their testimony. In a

⁴¹ M. Fazel, J. Wheeler and J. Danesh, 'Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review', *The Lancet*, vol. 365, no. 9467, 9 April 2005, pp. 1309–14.

⁴² I. Derluyn, E. Broekaert and G. Schuyten, 'Emotional and Behavioural Problems in Migrant Adolescents in Belgium', *European Journal of Child and Adolescent Psychiatry*, vol. 17, no. 200, 2008, pp. 54–62.

⁴³ R. Hek, *The Experiences and Needs of Refugee and Asylum Seeking Children in the UK: A Literature Review*, University of Birmingham, Research Report 635, 2005; M. Hodes, D. Jagdev, N. Chandra and A. Cunliffe, 'Risk and Resilience for Psychological Distress amongst Unaccompanied Asylum Seeking Adolescents', *Journal of Child Psychology and Psychiatry*, vol. 49, no. 7, 2008, pp. 723–32.

⁴⁴ K. Ehntholt and W. Yule, 'Practitioner Review: Assessment and Treatment of Refugee Children and Adolescents Who Have Experienced War-related Trauma', *Journal of Child Psychology and Psychiatry*, vol. 47, no. 12, 2006, pp. 1197–210.

⁴⁵ G. Dura-Vila, H. Klasen, Z. Makatini, Z. Rahimi and M. Hodes, 'Mental Health Problems of Young Refugees: Duration of Settlement, Risk Factors and Community-based Interventions', *Clinical Child Psychology and Psychiatry*, 2012, pp. 1–20.

⁴⁶ M. Hodes, 'Psychopathology in Refugee and Asylum Seeking Children', in M. Rutter et al. (eds.), *Rutter's Child and Adolescent Psychiatry*, 5th edition, Oxford: Blackwell, 2008, pp. 474–86.

⁴⁷ M. Fazel, R. Reed, C. Panter-Brick and A. Stein, 'Mental Health of Displaced and Refugee Children Resettled in High-income Countries: Risk and Protection Factors', *The Lancet*, vol. 379, no. 9812, 21–27 January 2012, pp. 266–82.

decision reviewed in this research, a 14-year-old boy was told: “*What you tell me is not credible. You continue to describe your reasons for fleeing in such a superficial way that I can only believe that you haven’t actually experienced this. This alone would justify rejecting your application for lack of credibility.*”⁴⁸ When the child was later diagnosed as suffering from post-traumatic stress disorder, his care workers communicated their suspicions that he might have been a victim of sexual abuse in his country of origin to the determining authority. Could this explain his inability to provide the level of detail his interviewer sought? Mental health problems can affect an individual’s capacity to recall and relate past experiences. The following sections encourage interviewers and decision-makers to consider in particular the effects of trauma, depression and anxiety.

3.1 Trauma, depression and anxiety

Trauma can have multiple consequences, which significantly affect a person’s everyday life and memory. Traumatic experiences can be divided into two types – exposure to a single, sudden distressing event, or repeated exposure.⁴⁹ Asylum-seeking children may have experienced a single event, which they present as the ‘reason’ for seeking protection. However, in many cases they have also experienced persistent trauma, such as long-term exposure to violence in their home country, separation from their parents, a perilous journey to the asylum country, and abuses associated with trafficking.

Repeated trauma from a young age has been found to have a particularly deleterious effect on brain and language development and on memory. In part, this might be because children and adolescents are particularly prone to dissociation.⁵⁰ Dissociation is described as “*disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment.*”⁵¹ It can affect what someone is able to remember or tolerate talking about. Dissociation typically leaves a person in an emotionally numb state. In an asylum interview, symptoms of dissociation can easily be misinterpreted. In one case reviewed in this research, an adjudicator remarked to a 17-year-old girl: “*You also told me your story without showing any emotion whatsoever. The determining authority considers this also an indicator of a fictitious story.*”⁵²

The claim may have been fabricated, but it is also possible that there were other reasons – such as past trauma – for the girl’s emotionless presentation. Interviewers and decision-makers should be aware that memories of traumatic experiences can be difficult to disclose because they evoke the physiological and emotional reactions associated with the original event, and may lead to re-experiencing the event and the traumatization.

Interviewers also need to be alert to signs of depression and anxiety in children, as well as other mental health problems, as these can affect both behaviour and memory. Depression and anxiety are often associated with war trauma, loss, disruption of social ties, uprooting, and other stressors, such as the challenge of obtaining secure asylum status. Depression may disturb sleep patterns and the child’s ability to concentrate, and this can affect the individual’s presentation in an asylum interview. It may also manifest as low self-worth, and feelings of guilt and hopelessness.

Anxious and depressed adolescents often withdraw and appear unemotional; as a consequence, their distress is not communicated.⁵³ Anxiety is also associated with increased restlessness, for example averting

⁴⁸ D/029/AFG/M/14.

⁴⁹ L. Terr, ‘Childhood Traumas: An Outline and Overview’, *American Journal of Psychiatry*, vol. 148, no. 1, 1991, pp. 10–20; American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition, Arlington, VA: American Psychiatric Publishing, 2013.

⁵⁰ J. Chu, ‘Posttraumatic Stress Disorder: Beyond DSM-IV’, *American Journal of Psychiatry*, vol. 167, no. 6, 2010, pp. 615–17.

⁵¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, p. 447.

⁵² D/026/AFG/F/17.

⁵³ M. German and K. Ehntholt, ‘Working with Refugee Children and Families’, *The Psychologist*, vol. 20, no. 3, 2007, pp. 152–5.

one's eyes, fidgeting or other body movements. These can be wrongly interpreted as signs of deception.⁵⁴ A judge who assumed that foot-swinging was a sign of lying may actually have been seeing evidence of anxiety.⁵⁵

Anxious people have also been shown to be more easily influenced by adversarial interviews. Given that children and adolescents are more suggestible than adults,⁵⁶ interviewers should be particularly careful to avoid leading questions.

Some asylum-seeking children display signs of post-traumatic stress, depression and anxiety immediately on arrival; in other cases, signs may emerge over time. After a while their distress may become externalized, particularly during adolescence when they are more likely to act impulsively. Inadequate care in countries of asylum, social marginalization and antisocial peer groups may increase the risk of antisocial behaviour. This may affect how a child is perceived, shifting away from viewing him or her as a 'victim' and instead seeing the child as 'a problem'. This, in turn, can influence the evaluation of the credibility of the child's statements.⁵⁷

Finally, it is important also to recognize that many asylum-seeking children, despite their exposure to extreme conditions and traumatic events, do not develop mental health problems. Personal resilience may protect them against developing such problems. If children can make sense of their experiences in a way that gives them a feeling of control over their own lives, they are less likely to develop mental health difficulties.

Furthermore, it has been observed that children who are able to integrate into a community and find social support typically fare better than others.⁵⁸

3.2 Impact of lack of trust

Trust is considered a key component in facilitating disclosure of distressing personal experiences.⁵⁹ But what exactly is trust, and how does it develop? Trust has been described as "a multidimensional construct that is fundamentally relational".⁶⁰ In other words, it develops through interaction between people.⁶¹ Of the many definitions of trust, the following seems particularly pertinent to the relationship between asylum-seekers and the determining authorities: "The essence of trust is the belief that others are fair, that they will not take advantage of us, although they could."⁶²

Psychologists explain that the strong affective bond between young children and their principal caregivers shapes the development of a person's ability to trust others, to elicit positive responses, and to regulate his

⁵⁴ G. Kaufmann, G. Drevland, E. Wessel, G. Overskeid and Svein Magnussen, 'The Importance of Being Earnest: Displayed Emotions and Witness Credibility', *Applied Cognitive Psychology*, vol. 17, no. 200, 2003, pp. 21–34.

⁵⁵ In her thesis, Kathrin Bergthaler, *Ich bin Wahrnehmungsfachmann: Geschlecht und Kultur in der Wahrnehmung von RichterInnen am österreichischen Asylgerichtshof*, University of Vienna, 2011, p. 42 quotes a judge who said: 'I recently had an Armenian who every time he lied would swing his foot.'

⁵⁶ G. H. Gudjonsson and L. Henry, 'Child and Adult Witnesses with Intellectual Disability: The Importance of Suggestibility', *Legal and Criminological Psychology*, vol. 8, no. 2, September 2003, pp. 241–52.

⁵⁷ E. Wessel, S. Magnussen and A. Melinder, 'Expressed Emotions and Perceived Credibility of Child Mock Victims Disclosing Physical Abuse', *Applied Cognitive Psychology*, vol. 27, 2013, pp. 611–16.

⁵⁸ M. Fazel, R. Reed, C. Panter-Brick and A. Stein, 'Mental Health of Displaced and Refugee Children Resettled in High-income Countries: Risk and Protection Factors', *The Lancet*, vol. 379, no. 9812, 21–27 January 2012, pp. 266–82.

⁵⁹ D. Bogner, J. Herlihy and C. R. Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, 2007, pp. 75–81.

⁶⁰ C. Flanagan, 'Trust, Identity, and Civic Hope', *Applied Developmental Science*, vol. 7, no. 3, 2003, pp. 165–71 at p. 165.

⁶¹ P. Linell and O. Keselman, 'Trustworthiness at Stake: Trust and Distrust in Investigative Interviews with Russian Adolescent Asylum-seekers in Sweden', in I. Marková and A. Gillespie (eds.), *Trust and Conflict: Representation, Culture and Dialogue*, Oxford: Routledge, 2012, pp. 156–80 at p. 157.

⁶² C. Flanagan, 'Trust, Identity, and Civic Hope', pp. 165–6.

or her emotions. This set of relational patterns is called an attachment system and is particularly important when someone feels threatened.⁶³

Unaccompanied asylum-seeking children have often experienced disrupted attachments as a result of early separation from (or loss of) parents or caregivers. Or, they may have suffered violation of this relationship, having for instance been subjected to domestic or sexual abuse or female genital mutilation. As a result, their ability to trust, or even to relate to others, may be impaired. Trust can be undermined as a result of a single experience or due to repeated trauma.⁶⁴ The impact of lack of trust on disclosure by children has been observed by mental health practitioners who encounter difficulties ascertaining details of a child's case.⁶⁵

Many asylum-seekers have experienced persecution and/or abuse at the hands of the authorities in their countries of origin, or in countries of transit, and this has seriously violated their trust in government officials.⁶⁶ Asylum-seeking children may have encountered any number of adults – including smugglers, traffickers, border guards, immigration and police officials, and even social workers – who have betrayed their confidence or not acted in their best interests.

A lack of trust in the determining authority may prevent child applicants from giving a full and truthful account of their experiences. While taking a kind and disarming approach may help, many children's experiences of mistrust and fear may be too deep-rooted to overcome in a single interview. As discussed in Chapter 4, the child's guardian can play a crucial role in helping to establish a climate of trust.

3.3 Shame and stigma

Shame is a socially-focused emotion associated with having what one considers negative aspects of oneself disclosed to others.⁶⁷ Stigma is defined as a “*mark of shame or discredit*.”⁶⁸ In asylum interviews with adults, shame and stigma have been identified as significant barriers to full and truthful disclosure.⁶⁹ While similar research has not been done on asylum-seeking children, feelings of shame and embarrassment have been found to result in children providing less information, and less accurate information, when asked to recall medical procedures and in sexual abuse testimonies.⁷⁰

Girls from some societies may be reluctant to disclose experiences of sexual violence for fear of bringing shame or stigmatization on themselves or their families, particularly where the subject is taboo in their own cultural context.⁷¹ This can also be true of boys. In one case reviewed in this research an adolescent boy who

⁶³ P. Crittenden, 'Danger and Development: The Organisation of Self-protective Strategies', *Monographs of the Society for Research in Child Development*, vol. 64, 1999, pp. 145–71.

⁶⁴ M. Ní Raghallaigh, 'The Causes of Mistrust amongst Asylum Seekers and Refugees: Insights from Research with Unaccompanied Asylum-Seeking Minors Living in the Republic of Ireland', *Journal of Refugee Studies*, vol. 27, no. 1, 2014, pp. 82–100.

⁶⁵ M. Hodes, 'Psychopathology in Refugee and Asylum Seeking Children', in M. Rutter et al. (eds.), *Rutter's Child and Adolescent Psychiatry*, 5th edition, Oxford: Blackwell, 2008, pp. 474–86.

⁶⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979) – hereafter *UNHCR Handbook*, para. 198.

⁶⁷ M. Cunha, M. Matos, D. Faria and S. Zagalo, 'Shame Memories and Psychopathology in Adolescence: The Mediator Effect of Shame', *International Journal of Psychology and Psychological Therapy*, vol. 12, no. 2, 2012, pp. 203–18, at 204.

⁶⁸ *Merriam Webster Dictionary*, revised edition, 2004.

⁶⁹ D. Bogner, J. Herlihy and C. R. Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, 2007, pp. 75–81.

⁷⁰ G. Goodman and J. A. Quas, 'Predictors of Accurate and Inaccurate Memories of Traumatic Events Experienced in Childhood', *Consciousness and Cognition*, vol. 3, 1994, pp. 269–94.

⁷¹ See for example, Immigration and Refugee Board of Canada, *Guidelines Issued by the Chairperson Pursuant to Section 65 (4) of the Immigration Act: Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution*, 13 November 1996, no. 4, part D.

based his claim on sexual harassment and abuse in Afghanistan was hesitant to speak about his experiences until his male legal representative was replaced by a female.⁷²

Children's reluctance to disclose information about alleged abuse has been observed to affect their interviewer's behaviour. When children are not forthcoming, interviewers tend to digress from their interviewing guidelines, for instance, they issue fewer requests for information or make more unsupportive comments.⁷³ In the case mentioned above in which there were indications that an Afghan boy, who had been documented as suffering from PTSD, may have been abused as a *Bacha Baazi* (dancing boy), the interview started out in a child-friendly manner, but rapidly turned adversarial, with the interviewer repeatedly expressing disbelief.⁷⁴

Some interviewers of sexually abused children believe that they need repeated interviews and leading questions to elicit details. However, given that children and adolescents are more susceptible than adults to providing an answer in order to satisfy the interviewer, this approach may fail to elicit more accurate information.⁷⁵ Repeating questions may be interpreted by the child as an indication that he or she has not yet provided a satisfactory response, and may make the child more likely to change his or her answer.

Asylum-seeking children may feel that disclosure of their experiences will bring shame on themselves or their family, and they may adjust what they report accordingly, at the expense of details that could be important for their asylum claim. They may also feel shame or guilt about having survived adversities and escaped to safety, when others did not. Interviewers and decision-makers should take into account the heightened sensitivity to shame during adolescence. As discussed in section 5.5, many unaccompanied asylum-seeking children also carry the weight of their families' expectations.

⁷² D/029/AFG/M/14.

⁷³ I. Hershkowitz, I. Orbach, M. E. Lamb, K. J. Sternberg and D. Horowitz, 'Dynamics of Forensic Interviews with Suspected Abuse Victims Who Do Not Disclose Abuse', *Child Abuse and Neglect*, vol. 30, 2006, pp. 753–69.

⁷⁴ D/029/AFG/M/14.

⁷⁵ M. Bruck and S. Ceci, 'Amicus Brief for the Case of State of New Jersey v. Michaels presented by the Committee of Concerned Social Scientists', *Psychology, Public Policy, and Law*, vol. 1, no. 2, 1995, pp. 272–322; M. Bruck and S. Ceci, 'The Suggestibility of Children's Memory', *Annual Review of Psychology*, vol. 50, 1999, pp. 419–39.

4. Autobiographical Memory

In addition to the issues outlined above, in order to understand the ability of adolescent asylum-seekers to respond to interviewers' questions, it is important to have some familiarity with how memory works.

Many factors can affect a person's ability to recall events and to provide a consistent and coherent narrative. Retrieving a memory involves the construction and reconstruction of an event; this makes it likely to change over time, with each retelling. Primo Levi wrote:

*"The memories which lie within us are not carved in stone; not only do they tend to become erased as the years go by, but they often change, or even grow, by incorporating extraneous features. Judges know this very well: almost never do two eyewitnesses of the same event describe it in the same way and with the same words, even if the event is recent and if neither of them has a personal interest in distorting it."*⁷⁶

Recollection of personal events is called autobiographical memory. A person's developmental stage, culture, early life experiences, and mental capacity, as well as physical and mental health, influence the specificity, coherence and consistency of his or her autobiographical memory.⁷⁷

4.1 The development of autobiographical memory

Autobiographical memories develop from approximately the age of two years. Once this basic memory system is established, children can recall single events and provide a description of them, albeit a limited one, and one that is associated with high levels of suggestibility.⁷⁸

As children grow older, the length and amount of information in their memories increases, while the basic structure and accuracy of the memory remains.⁷⁹ The ability to provide a coherent account develops rapidly between approximately 12 and 16 years of age, along with brain development, but does not fully mature until around 20 years.⁸⁰

Psychological research has highlighted a number of domains present in a full autobiographical memory account. These include *temporal coherence* – the ability to organize isolated events into a meaningful narrative with a clear order; *causal coherence* – the ability to provide motives and reasons for events; and *thematic coherence* – the ability to structure a story into overarching themes.⁸¹

⁷⁶ P. Levi, *The Drowned and the Saved*, New York: Simon & Schuster, 1988, p. 23.

⁷⁷ I. Cordon, M. Pipe, S. Liat, A. Melinder and G. Goodman, 'Memory for Traumatic Experiences in Early Childhood', *Developmental Review*, vol. 24, 2004, pp. 101–32.

⁷⁸ A. Melinder, D. Maria, T. Endestad and S. Magnussen, 'Relations between Episodic Memory, Suggestibility, Theory of Mind, and Cognitive Inhibition in the Preschool Child', *Scandinavian Journal of Psychology*, vol. 47, 2006, pp. 485–95.

⁷⁹ M. Lamb, K. Sternberg and P. Esplin, 'Making Children into Competent Witnesses: Reactions to the Amicus Brief in re Michaels', *Psychology, Public Policy, and Law*, vol. 1, no. 2, 1995, pp. 438–49.

⁸⁰ M. Pasupathi and C. Wainryb, 'On Telling the Whole Story: Facts and Interpretations in Autobiographical Memory Narratives from Childhood through Midadolescence', *Developmental Psychology*, vol. 46, no. 3, May 2010, pp. 735–46.

⁸¹ T. Habermas and C. de Silveira, 'The Development of Global Coherence in Life Narratives across Adolescence: Temporal, Causal, and Thematic Aspects', *Developmental Psychology*, vol. 44, no. 3, May 2008, pp. 707–21.

Examination of developmental differences suggests that temporal, thematic and causal coherence all increase during adolescence, but at different rates. For example, young adolescents typically provide narratives with factual content and action statements but with less orientation in time and place, and fewer interpretations or explanations, than older adolescents.⁸² However, any assessment of temporal coherence needs to take into account that there is considerable cultural variation in the way time is conceptualized (for example dates, times and seasons) and in the importance placed on time and dates.

Causal coherence increases most between 12 and 16 years of age, coinciding with increased capacity to consider the perspective of others.⁸³ One study found that older adolescents were significantly more proficient than young adolescents in recalling instances when they had been harmed or had harmed others.⁸⁴ The authors suggest that this task is a conceptual challenge because it demands the interpretation of facts in the light of motives and emotions. The ability to order life events into themes, such as being able to provide examples of events that contributed to the development of one's political beliefs, emerges in late adolescence or early adulthood.

4.2 Accuracy of autobiographical memory

Importantly, increased proficiency in narrating memories does not necessarily reflect an increase in accuracy of the memories. Memories that hold personal or emotional importance are likely to be recalled better than those that do not.⁸⁵ If an event occurs repeatedly, the accuracy of the recall of each event is diminished. Under these conditions, 'script memories' are established based on typical events rather than the specifics of each event, and consequently our memories tend to become generalized.

When considering the accuracy of a memory, it is particularly important to differentiate between 'central' and 'peripheral' details.⁸⁶ The former are fundamental to the narrative of an event and, typically, are concerned with 'who, where, what' (for example remembering the weapon used in an attack), whereas a 'peripheral' detail is less essential to the narrative (for example the name of the street in which the attack occurred).

What is central and peripheral will vary between people according to what they considered important during the event. A 16-year-old Afghan boy provided a highly detailed narrative about how he crossed the border into Iran, climbing over a barbed-wire fence, avoiding detection by Iranian guards, before being transported for a long time in the boot of a car, where the smugglers ordered him not to make a sound. When the interviewer asked him: "*What was the colour of this car?*" the boy could not recall. For him, that detail was most likely peripheral rather than central.⁸⁷

One study asked 13-year-olds to recall an injury or hospital admission, and found that five years after the event the key facts in the children's accounts remained accurate. However, their memory for 'central' events was higher than for 'peripheral' ones, particularly if the child was highly distressed at the time of

⁸² K. A. Willoughby, M. Desrocher, B. Levine and J. F. Rovet, 'Episodic and Semantic Autobiographical Memory and Everyday Memory during Late Childhood and Early Adolescence', *Frontiers in Psychology*, vol. 3, no. 53, February 2012.

⁸³ J. G. Bohanek and R. Fivush, 'Personal Narratives, Well-being, and Gender in Adolescence', *Cognitive Development*, vol. 25, no. 4, October–December 2010, pp. 368–79.

⁸⁴ M. Pasupathi and C. Wainryb, 'On Telling the Whole Story: Facts and Interpretations in Autobiographical Memory Narratives from Childhood through Midadolescence', *Developmental Psychology*, vol. 46, no. 3, 2010, pp. 735–46.

⁸⁵ W. Kuyken and R. Howell, 'Facets of Autobiographical Memory in Adolescents with Major Depressive Disorder and Never-depressed Controls', *Cognition and Emotion*, vol. 20, nos. 3–4, April–June 2006, pp. 466–87.

⁸⁶ I. Cordon, M. Pipe, S. Liat, A. Melinder and G. Goodman, 'Memory for Traumatic Experiences in Early Childhood', *Developmental Review*, vol. 24, 2004, pp. 101–32.

⁸⁷ D/170/AFG/M/16.



the hospitalization.⁸⁸ This discrepancy between central and peripheral memories has been replicated in studies with adults in the asylum system.⁸⁹ It has also been observed that people, particularly if they are younger, are more likely to change their responses about peripheral aspects of an event depending on the question asked.⁹⁰ These observations underline the importance of focusing interviews with children on central issues, while recognizing that what is ‘central’ and ‘peripheral’ can vary depending on the individual applicant’s perception.

4.3 Early influences on autobiographical memory

Early experiences can have a long-lasting impact on the development of autobiographical memory. The communication young children experience shapes the development of their autobiographical memory. Most studies that have examined mother–child interactions have found that mothers who describe their own detailed memories to their children foster offspring who do the same.⁹¹

While linguistic and cognitive developments are necessary to be able to relate autobiographical memories, they are insufficient. Children and adolescents develop the skills of narration through conversation with

⁸⁸ C. Peterson and N. Whalen, ‘Five Years Later: Children’s Memory for Medical Emergencies’, *Applied Cognitive Psychology*, vol. 15, no. 7, 2001, pp. 7–24.

⁸⁹ J. Herlihy, P. Scragg and S. Turner, ‘Discrepancies in Autobiographical Memories – Implications for the Assessment of Asylum Seekers: Repeated Interviews Study’, *British Medical Journal*, 2002, pp. 324–7.

⁹⁰ R. Sutherland and H. Hayne, ‘Age-related Changes in the Misinformation Effect’, *Journal of Experimental Child Psychology*, vol. 79, 2001, pp. 388–404.

⁹¹ E. Reese, F. Jack and N. White, ‘Origins of Adolescents’ Autobiographical Memories’, *Cognitive Development*, vol. 25, no. 4, October–December 2010, pp. 352–67.

their parents and other caregivers. This enables them to re-examine their experiences and bring them together into formed memories. Children who have been separated from their caregivers, and particularly children with insecure attachments, may not have such well-developed memory systems.⁹²

Cultural norms, including what is considered a significant event in that culture, influence autobiographical memories: these 'cultural life scripts' become filters through which experiences are recorded mentally, and autobiographical memories are then categorized and recounted.⁹³ If an adolescent does not have such a 'script' to help make sense of what has happened, he or she is less likely to recount the events clearly.⁹⁴

A number of studies have compared individualistic cultures (mostly Western ones that place a high value on self-determination and the uniqueness of the individual) with interdependent cultures (those that define a person's identity in relation to the group, respect modesty and place a high value on loyalty and harmony, such as China or Afghanistan).⁹⁵ This research shows that people from individualistic cultures provide longer and more detailed memories with a focus on emotions, intentions and personal beliefs. People from interdependent cultures tend to provide shorter memories that focus less on individual experiences and more on social events.⁹⁶ For example, Chinese adolescents process memories holistically; they integrate information and focus on connections between events. As a result, they describe events with less detail and place them in a social context. Western adolescents take a more analytic and individualistic approach, where their own feelings and actions are central to the story. Despite differences in the volume and specificity of memories, one study found that forgetting rates were the same in adolescents from all cultural backgrounds.⁹⁷

4.4 Effects of mental health problems on autobiographical memory

It is generally difficult for adolescents to retrieve emotion-based memories. Research indicates that this is even more apparent among adolescents with mental health problems, particularly those suffering from depression and post-traumatic stress disorder.

Depression and trauma can affect autobiographical memory and result in what is known as 'overgeneral' memory. Overgeneral memory is characterized by a lack of detail about events, and has been shown to be strongly linked to long-term emotional difficulties. The individual's emotional state also influences the coherence of autobiographical memory accounts. An understanding of overgeneral memory is important in the asylum context because the detail and coherence of an applicant's account are often considered indicative of the credibility of that account.⁹⁸

⁹² G. Baugerud and A. Melinder, 'Maltreated Children's Memory of Stressful Removals from their Biological Parents', *Applied Cognitive Psychology*, vol. 26, 2012, pp. 261–70.

⁹³ Y. Chen, H. M. McNally and E. Reese, 'Development in the Organization of Episodic Memories in Middle Childhood and Adolescence', *Frontiers in Behavioural Neuroscience*, vol. 7, July 2013, pp. 84–6; J. M. Fitzgerald, 'Autobiographical Memory: Reports in Adolescence', *Canadian Journal of Psychology/Revue Canadienne de Psychologie*, vol. 35, no. 1, March 1981, pp. 69–73.

⁹⁴ H. Schoofs, D. Hermans and F. Raes, 'Effect of Self-discrepancy on Specificity of Autobiographical Memory Retrieval', *Memory*, vol. 20, no. 1, 2012, pp. 63–72.

⁹⁵ L. Jobson, 'Cultural Differences in Specificity of Autobiographical Memories: Implications for Asylum Decisions', *Psychiatry, Psychology and Law*, vol. 16, 2009, pp. 453–7.

⁹⁶ R. Antaliova, T. Hansen, K. Gulbrandsen, M. De La Mata and A. Santamaria, 'Adolescents' Meaningful Memories Reflect a Trajectory of Self-development from Family over School to Friends', *Nordic Psychology*, vol. 63, no. 3, October 2011, pp. 4–24.

⁹⁷ Y. Chen, H. M. McNally and E. Reese, 'Development in the Organization of Episodic Memories in Middle Childhood and Adolescence', *Frontiers in Behavioural Neuroscience*, vol. 7, July 2013, pp. 84–6.

⁹⁸ J. Herlihy, P. Scragg and S. Turner, 'Discrepancies in Autobiographical Memories – Implications for the Assessment of Asylum Seekers: Repeated Interviews Study', *British Medical Journal*, 2002, pp. 324–7.

Poor autobiographical memory, characterized by broad generalizations and lack of specificity, is associated with having experienced negative life events,⁹⁹ and is influenced by the developmental stage at which the events occurred. It is thought that individuals who were exposed to trauma at a young age avoid accessing specific memories, so as not to experience further distress when remembering them.¹⁰⁰

One study of interviews with adolescents who had overgeneral memories found that interviewers needed to provide more prompts and encouragement to enable these young people to access their memories. If exposure to negative events was ongoing, adolescents' memories were even more limited – their accounts were typically shorter and had more omissions.¹⁰¹

Adolescents who have experienced trauma have more difficulty reporting autobiographical facts than their non-traumatized peers.¹⁰² A study that compared adolescents who had been exposed to war (in Bosnia or Serbia) with those who had not (in Norway) found that the Bosnian and Serbian adolescents had less specific memories of negative, neutral or positive events than the Norwegians.¹⁰³ Another study found that the number and severity of the traumas that adolescents experienced correlated with less specificity in the autobiographical memories that they were able to relate.¹⁰⁴

These findings may appear counter-intuitive. One interviewer of an African boy commented that even if [the child] was just 13 when the claimed events took place, "*if violent events indeed occurred he should have remembered more*".¹⁰⁵ The above-mentioned research would suggest the opposite.

It is generally observed that depressed adolescents provide less specific autobiographical memories, with less emotional and sensory content.¹⁰⁶ Flattened emotions are frequently a sign of depression. In a complicated case reviewed in this research involving a girl from the Democratic Republic of Congo, the guardian noted: "*It struck me that in the course of the interview and the longer it took, the more she [the applicant] started to have an empty look and the interpreter had to repeat things.*"¹⁰⁷ Transcripts of the interview mention at different points that the girl falls silent, or says she is tired.

Using mental avoidance to circumvent troubling thoughts is common in people suffering from depression and/or posttraumatic stress disorder, particularly children and adolescents. It may be that these mental strategies to avoid distress are responsible for a lack of specificity in autobiographical memory.¹⁰⁸ Although there is a need for more research, it is clear that trauma and depression can significantly change the nature of an adolescent's autobiographical memory – impairing recall of specific events or the emotional content of the events.

⁹⁹ M. Arie, A. Apter, I. Orbach, Y. Yefet, and G. Zalzman, 'Autobiographical Memory, Interpersonal Problem Solving, and Suicidal Behavior in Adolescent Inpatients', *Comprehensive Psychiatry*, vol. 49, no. 1, 2008, pp. 22–9.

¹⁰⁰ K. Valentino, S. Toth and D. Cicchetti, 'Autobiographical Memory Functioning among Abused, Neglected, and Non-maltreated Children: The Overgeneral Memory Effect', *Journal of Child Psychology and Psychiatry*, vol. 50, no. 8, August 2009, pp. 1029–38.

¹⁰¹ R. Johnson, A. Follmer Greenhoot, E. Glisky, and L. A. McCloskey, 'The Relations Among Abuse, Depression, and Adolescents' Autobiographical Memory', *Journal of Clinical Child and Adolescent Psychology*, vol. 34, no. 2, June 2005, pp. 235–47.

¹⁰² C. Meesters, H. Merckelbach, P. Muris, and I. Wessel, 'Autobiographical Memory and Trauma in Adolescents', *Journal of Behavior Therapy and Experimental Psychiatry*, vol. 31, no. 1, March 2000, pp. 29–39.

¹⁰³ T. Brennen, M. Hasanovic, M. Zotovic, I. Blix et al., 'Trauma Exposure in Childhood Impairs the Ability to Recall Specific Autobiographical Memories in Late Adolescence', *Journal of Traumatic Stress*, vol. 23, no. 2, April 2010, pp. 240–7.

¹⁰⁴ A. de Decker, D. Hermans, F. Raes and P. Eelen, 'Autobiographical Memory Specificity and Trauma in Inpatient Adolescents', *Journal of Clinical Child and Adolescent Psychology*, vol. 32, no. 1, March 2003, pp. 22–31.

¹⁰⁵ D/53/SEN/M/17.

¹⁰⁶ R. J. Park, I. Goodyer and J. Teasdale, 'Categoric Overgeneral Autobiographical Memory in Adolescents with Major Depressive Disorder', *Psychological Medicine*, vol. 32, no. 2, 2002, pp. 267–76. However, a smaller number of studies did not find overgeneral memory to be associated with depression. The differences may be explained by the way individuals cope with depression.

¹⁰⁷ D/152/DRC/F/16.

¹⁰⁸ W. Kuyken, R. Howell and T. Dalgleish, 'Overgeneral Autobiographical Memory in Depressed Adolescents With, Versus Without, a Reported History of Trauma', *Journal of Abnormal Psychology*, vol. 115, no. 3, August 2006, pp. 387–96.

5. The Child's Background and Personal Characteristics

There are multiple interactions between an individual's development and his or her family background, wider cultural and societal influences and personal characteristics and experiences. These need to be kept in mind when assessing the account of an asylum-seeking child. Some of these influences and characteristics are outlined briefly below, and are further explored in Chapters 4 and 6.

5.1 Cultural background

The cultural background of the asylum-seeking child is almost always different from that of the interviewer and decision-maker. Cultural differences can be the cause of many misunderstandings, including but not limited to those arising from the fact that the applicant and the interviewer rarely speak the same language. Culture also informs emotional expression in ways that are not always immediately evident to the listener.¹⁰⁹

The importance of cultural competence has been recognized in various professions, in particular in law and medicine, in order to “exclude the risk of misrepresentation or of underplaying significant emotional or behavioural characteristics.”¹¹⁰

The *Beyond Proof* report pointed to a variety of ways in which cultural differences can influence credibility assessment, when adults apply for asylum.¹¹¹ The UK Court of Appeals has explained:

*“What may seem implausible to a decision maker in this country may nonetheless be true and may be much more plausible when seen in the context of the attitudes and conditions in the foreign state from which the asylum seeker has come. There may, it is argued, be cultural and linguistic differences between such a country and this country which could mislead the decision maker into regarding as implausible and incredible something which is explicable once those differences are taken into account.”*¹¹²

There is a particular need for cultural competence on the part of adjudicators handling children's claims, because notions of childhood are culturally variable and cultural norms influence what a person thinks a child should know. For instance, interviewers and decision-makers need to be cognizant of the wide variation in the amount and type of information parents in different cultures share with their children, sometimes depending on birth order or gender. One stakeholder noted that “sometimes in Afghan families the oldest son knows more than the youngest. The oldest is given a certain position in the family. So with a 14-year-old, it matters what position he had.”¹¹³

¹⁰⁹ S. Meffert, K. Musalo, D. McNeil and R. Binder, ‘The Role of Mental Health Professionals in Political Asylum Processing’, *Journal of the American Academy of Psychiatry and the Law*, vol. 38, no. 4, 2010, pp. 479–89 at p. 483.

¹¹⁰ S. Walker, ‘Toward Culturally Competent Practice in Child and Adolescent Mental Health’, *International Social Work*, vol. 48, no. 1, 2005, pp. 49–62, at p. 31. ‘Culture’ is understood to mean the ideas, customs and social behaviour of a particular people or society.

¹¹¹ UNHCR, *Beyond Proof*, pp. 66–7.

¹¹² *Y v. Secretary of State for the Home Department*, [2006] EWCA Civ 1223, United Kingdom: Court of Appeal (England and Wales), at 19.

¹¹³ SH 09.

In several cases observed in this research, interviewers made assumptions about what the child should know. A 17-year-old Afghan girl who was unable to give her parents' places of birth was asked, "*Didn't you ever speak to your parents about ancestry?*"¹¹⁴ Another was told: "*It is not realistic that your father never spoke to you about his job*", pointing out that the girl had lived a normal family life and spent time with her father daily.¹¹⁵ Yet, it is not safe to assume that all parents in all cultures share their daily lives with their children or speak to them about their origins. With this in mind, one court reminded the determining authority that the assertion of a young asylum-seeker that he did not know his father's date of birth had to be understood in the light of the child's cultural background.¹¹⁶

Culture, as well as different levels of education among asylum-seeking children, may affect how they conceptualize time and dates, as well as distance.¹¹⁷ An Afghan boy who did not know the month of his birth explained that "*My mother told me that I was born at the time of the picnic. She told me that people went out to the picnic but that she was busy with me because I had just been born.*"¹¹⁸

An adolescent who has not been to school, never owned a watch, and comes from a farming culture is likely to conceptualize time in relation to seasons or crops rather than calendar dates. Recognizing this fact, the interviewer of a 15-year-old Eritrean boy repeatedly reassured the child that he was not required to provide exact dates, and that possible gaps would not have a negative impact on the assessment of his claim.¹¹⁹

There are also differences in the degree to which people from different backgrounds verbalize their thoughts and display their emotions.¹²⁰ Differences have been observed even between European countries in terms of how young adults (Italian versus Norwegian) evaluate emotional material (pictures of emotional events).¹²¹ One study of Somali girls and young women notes that they tend to value concealment and to fear disclosure, lest they be labelled 'bad, mad or possessed'.¹²² Another study points out that communities may have euphemisms or mechanisms for collective avoidance of particular traumas of which an evaluator may be unaware. One example referred to Darfurians using the term 'away for several days' to describe women whom rebels had kidnapped and raped.¹²³

Erroneous conclusions about credibility can arise from cultural misunderstandings between the applicant, the interviewer and the decision-maker. Aware of this risk, several stakeholders called for more training of adjudicators on culture-specific aspects of their work.¹²⁴

¹¹⁴ D/26/AFG/F/17.

¹¹⁵ D/01/AFG/M/16.

¹¹⁶ Judgment 1640/2013 of the Bari (Italy) Court of Appeal.

¹¹⁷ Austria, Asylum Court (AsylGH) C1 425807 – 1/12, 15 May 2013.

¹¹⁸ D/170/AFG/M/16.

¹¹⁹ IV/60/ERI/M/15.

¹²⁰ M. Clare, S. Goodman, H. Liebling and H. Laing, "You Keep Yourself Strong": A Discourse Analysis of African Women Asylum Seekers' Talk about Emotions', *Journal of International Women's Studies*, vol. 15, no. 1, January 2014, pp. 83–95.

¹²¹ C. Mirandola, E. Toffalini, M. Grassano, C. Cornoldi and A. Melinder, 'Inferential False Memories of Events: Negative Consequences Protect from Distortions when the Events are Free from Further Elaboration', *Memory*, vol. 22, 2013, pp. 1–11.

¹²² S. H. Whitakker, G. Hardy, K. Lewis and L. Buchan, 'An Exploration of Psychological Well-being with Young Somali Refugee and Asylum-seeking Women', *Clinical Child Psychology and Psychiatry*, vol. 10, no. 2, 2010, pp. 178–96, at 190.

¹²³ S. Meffert, K. Musalo, D. McNiel and R. Binder, 'The Role of Mental Health Professionals in Political Asylum Processing', *Journal of the American Academy of Psychiatry and the Law*, vol. 38, no. 4, 2010, pp. 479–89, at p. 483.

¹²⁴ SH 10, SH 29, SH 30, SH 79.

5.2 Educational background

Asylum authorities regularly consider chronological age when deciding how to approach interviews with children and when assessing their testimony, but a child's level of education can be equally important. Many children who were the subject of this research had not attended school at all and were illiterate. Others had only a few years of primary schooling. Even apparently simple questions were sometimes not understood. An exchange with a 13-year-old boy from a rural background and without formal education went like this:

Interviewer: *"Have you ever had problems because of your political convictions or activities?"*

Child: *"No."*

Interviewer: *"Do you know what political means?"*

Child: *"No."*

Not surprisingly, the same child had difficulty when he was asked to draw a map.¹²⁵

In the context of another project conducted by UNHCR, a child said that *"when they [adjudicators] ask questions, they need to ask simpler ones. I never went to school. Many in Afghanistan didn't. Then it is hard to understand everything. In the end you give the wrong answer and they say you are lying."*¹²⁶

*Many stakeholders recognized the need to consider the child's level and type of education. One explained that, "as an interviewer, you try to gauge the background of the child and what he or she can know. For example, if the child has only been to Koranic school, he may have had very little real education, and one has to consider that."*¹²⁷

Nevertheless, in many cases observed in this research, the statements of children were deemed 'vague' or 'lacking in detail', without explicit consideration of their level of education.¹²⁸

5.3 Gender

Article 4 (2) of the Qualification Directive specifically identifies gender as one of the 'personal circumstances' of the applicant to be taken into account when assessing an application for international protection. This is not only a matter of recognizing, as does the Asylum Procedures Directive, that applicants may need special procedural safeguards due to their gender.¹²⁹ It is also necessary to recognize that gender-related cultural and social norms may affect the applicant's testimony and the manner in which it is assessed. This is true of child applicants as well as adults. One stakeholder put it this way: *"In the case of a girl from Afghanistan who lived in a sheltered environment, you have to ask yourself: What can she know?"*¹³⁰

¹²⁵ D/173/AFG/M/13.

¹²⁶ UNHCR (Austria), *UBAUM*, p. 20.

¹²⁷ SH 06.

¹²⁸ For instance, D/154/DRC/F/16, D/171/AFG/F/16, D/173/AFG/M/13, D/176/MLI/M/16, M/181/GIN/M/15.

¹²⁹ *Asylum Procedures Directive (recast)*, Recital 29 and Article 15 (3) a, b and c. Interviews are to be conducted by a person of the same sex as the applicant, and with an interpreter of the same sex, if the applicant so requests. In some cases, however, the applicant may feel more comfortable with interviewers and interpreters of the opposite sex. The Netherlands Aliens Circular provides that an applicant may ask for a male or female interpreter or interviewer (Aliens Circular 2000 C1/2.5).

¹³⁰ SH 03.

UNHCR's *Guidelines on Gender-Related Persecution* emphasize that gender roles are socially constructed,¹³¹ but in some cases, which are reviewed in this research, the constraints on girls in certain cultures did not seem to be taken into consideration. For instance, an adjudicator held it against a 17-year-old girl that she had not turned to the authorities in her country of origin for protection against honour-related crimes.¹³² This would need to be linked to an analysis both of the availability of effective protection in that country for victims of honour-related crimes, and of the possibility for girls to access protection.

In another case, without consideration of the cultural context, it was considered 'remarkable' that a girl did not know the full name of the older man she had been forced to marry.¹³³

The Swedish Migration Board cautions that gender may affect the detail of an account.¹³⁴ Some research indeed suggests that adolescent girls provide longer¹³⁵ and more emotionally rich narratives than boys,¹³⁶ with more detail.¹³⁷ Girls have been reported to offer more interpretation of their own and others' emotions and motives in their narratives.¹³⁸ This may be due to different patterns of socialization (girls may be encouraged to speak about their emotions more than boys). However, other studies have found no gender differences.¹³⁹ Further research is needed to understand possible gender differences in autobiographical accounts. The discrepancies between studies might be explained by different aspects of autobiographical memory being measured, or by the fact that due to later development, males do not achieve the same proficiency in retelling their stories until they are older.¹⁴⁰

¹³¹ UNHCR, *Guidelines on International Protection no. 1: Gender-Related Persecution within the Context of Article 1 (A) 2 of the 1951 Convention and/or its 1967 Protocol*, para 3.

¹³² D/122/RUS/F/17.

¹³³ D/121/AFG/F/17.

¹³⁴ SMB, Judicial Position concerning the method for the assessment of reliability and credibility, RCI 09/2013 (10 June 2013), at pp. 3 and 7.

¹³⁵ Y. Chen, H. M. McAnally and E. Reese, 'Development in the Organization of Episodic Memories in Middle Childhood and Adolescence', *Frontiers in Behavioural Neuroscience*, vol. 7, July 2013, pp. 84–6.

¹³⁶ J. G. Bohanek and R. Fivush, 'Personal Narratives, Well-being, and Gender in Adolescence', *Cognitive Development*, vol. 25, no. 4, October–December 2010, pp. 368–79.

¹³⁷ K. A. Willoughby, M. Desrocher, B. Levine and J. F. Rovet, 'Episodic and Semantic Autobiographical Memory and Everyday Memory During Late Childhood and Early Adolescence', *Frontiers in Psychology*, vol. 3, no. 53, February 2012; M. Pasupathi and C. Wainryb, 'On Telling the Whole Story: Facts and Interpretations in Autobiographical Memory Narratives from Childhood through Midadolescence', *Developmental Psychology*, vol. 46, no. 3, May 2010, pp. 735–46.

¹³⁸ J. G. Bohanek and R. Fivush, 'Personal Narratives, Well-being, and Gender in Adolescence', *Cognitive Development*, vol. 25, no. 4, October–December 2010, pp. 368–79; Q. Wang, Y. Shao and Y. J. Li, 'My Way or Mom's Way? The Bilingual and Bicultural Self in Hong Kong Chinese Children and Adolescents', *Child Development*, vol. 81, no. 2, 2010, pp. 555–67.

¹³⁹ A. Bohn and D. Berntsen, 'The Future is Bright and Predictable: The Development of Prospective Life Stories Across Childhood and Adolescence', *Developmental Psychology*, vol. 49, no. 7, July 2013, pp. 1232–41; A. Bohn and D. Berntsen, 'Life Story Development in Childhood: The Development of Life Story Abilities and the Acquisition of Cultural Life Scripts from Late Middle Childhood to Adolescence', *Developmental Psychology*, vol. 44, no. 4, July 2008, pp. 1135–47.

¹⁴⁰ A. Grysman and J. A. Hudson, 'Abstracting and Extracting: Causal Coherence and the Development of the Life Story', *Memory*, vol. 18, no. 6, August 2010, pp. 565–80.

5.4 Sexual orientation and/or gender identity¹⁴¹

People at risk of persecution or serious harm because of their sexual orientation or gender identity may qualify for international protection.¹⁴² UNHCR has issued guidelines on claims to refugee status based on sexual orientation and/or gender identity.¹⁴³ The EU Qualification Directive notes that a particular social group “might include a group based on a common characteristic of sexual orientation.”¹⁴⁴ Some Member States have explicitly identified gender identity (alongside sexual orientation) as a potential ground for refugee status in law or policy documents.¹⁴⁵

Adjudicators may not always be alert to the relevance of sexual orientation and gender identity in children’s cases. UNHCR notes that while sexual orientation may emerge between middle childhood and adolescence, not every lesbian, gay, bisexual, transgender or intersex (LGBTI) young person will have had romantic or sexual relationships.¹⁴⁶ The Swedish Migration Board similarly notes that “*adolescents can reveal their sexuality early*.”¹⁴⁷ Nonetheless, there is still a widespread perception of children as non-sexual, and some interviewers and decision-makers may consider the idea of a LGBTI¹⁴⁸ child as a contradiction in terms, believing that a LGBTI person cannot be a child, and vice-versa.¹⁴⁹ In the words of one expert, “*sex, like politics, is assumed to be the exclusive realm of adults*.”¹⁵⁰

There is considerable debate about the age at which gender identity or sexual orientation is established. Some argue it is present from birth, determined by genetics and prenatal hormones.¹⁵¹ Others claim it emerges around the onset of puberty.¹⁵² In any event, adolescence is the time of life most associated with sexual awakening.¹⁵³ The cultural context is also important to consider, as sexual orientation and gender identity are understood differently in different cultural settings. For example, sexual orientation can refer to sexual acts, but also to how an individual expresses his or her identity within their community. How gender and sexuality are discussed and conceptualized in a specific culture is likely to influence how a child understands his or her own sexuality. In some cultures, children learn that security comes with exhibiting ‘proper’ gender norms.¹⁵⁴

¹⁴¹ The concepts of sexual orientation and gender identity are explained in: *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (“Yogyakarta Principles”), March 2007.

¹⁴² On European practice see S. Jansen and T. Spijkerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, COC Nederland and Vrije Universiteit Amsterdam (2011); and European Agency for Fundamental Rights, *Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States*, Vienna, 2011, pp. 33–6.

¹⁴³ 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*, 23 October 2012, HCR/GIP/12/01 (hereafter *UNHCR Guidelines on Sexual Orientation and/or Gender Identity*).

¹⁴⁴ Qualification Directive (recast), Article 10 (1) (d).

¹⁴⁵ S. Jansen and T. Spijkerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, p. 7. Although not mentioned by Jansen and Spikerboer, Sweden has included gender identity as a ground for refugee status in the Aliens Act.

¹⁴⁶ UNHCR, *Guidelines on Sexual Orientation and/or Gender Identity*, paragraphs 63 (ii) and (iii).

¹⁴⁷ SMB, *Manual for Migration Cases*, section 40.2.

¹⁴⁸ For meanings attached to this terminology, see UNHCR, *Guidelines on Sexual Orientation and/or Gender Identity*.

¹⁴⁹ S. Hazeldean, ‘Confounding Identities: The Paradox of LGBT Children under Asylum Law’, *University of California Davis Law Review*, vol. 45, no. 2, 2011, pp. 373–443.

¹⁵⁰ H. Crawley, “‘Asexual, Apolitical Beings’: The Interpretation of Children’s Identities and Experiences in the UK Asylum System”, *Journal of Ethnic and Migration Studies*, vol. 37, no. 8, September 2011, pp. 1171–84.

¹⁵¹ R. Savin-Williams and G. Ream, ‘Prevalence and Stability of Sexual Orientation Component during Adolescence and Young Adulthood’, *Archives of Sexual Behaviour*, vol. 36, no. 3, 2007, pp. 385–94.

¹⁵² G. Remafedi, M. Renick, R. Blum, and L. Harris, ‘Demography of Sexual Orientation in Adolescents’, *Pediatrics*, vol. 89, no. 1, 1992, pp. 714–21.

¹⁵³ M. A. Robertson, “‘How Do I Know I Am Gay?’ Understanding Sexual Orientation, Identity and Behavior among Adolescents in an LGBT Center”, *Sexuality & Culture*, vol. 18, 2014, pp. 384–404 at p. 386.

¹⁵⁴ C. O. Izugbara, ‘The Socio-cultural Norms of Adolescents’ Notions of Sex and Sexuality in Rural South-eastern Nigeria’, *Sexualities*, vol. 8, 2005, pp. 600–17, at 613.

A claim based on sexual orientation or gender identity frequently turns on credibility. It is sometimes suggested that this is an area rife with abuse and, because of this, one adjudicator said that he has to ‘catch himself’ when he hears ‘yet another’ sexual orientation case.¹⁵⁵ The number of children applying for protection on grounds of sexual orientation or gender identity appears quite small, but such cases can be particularly challenging because the adolescent is just coming to terms with his or her sexuality. A lawyer expressed concern that these cases are not always approached with the necessary sensitivity, reporting that one of his child clients was asked about his homosexuality and then was invited to ‘show what happened.’¹⁵⁶

There is growing attention to the socio-cultural dimensions of sexual knowledge and behaviour, and adjudicators need to be sensitive to the fact that a great diversity of experience is associated with ‘coming out’ as it relates to gender, age, racial and ethnic and cultural backgrounds.¹⁵⁷

5.5 The weight of family expectations

Many unaccompanied asylum-seeking children carry the weight of their families’ expectations. This is a reality acknowledged by professionals who work with refugee children, and it would merit more systematic investigation. Research with non-asylum-seeking adolescents who come from interdependent cultures confirms that they are subject to significant expectations about their duty to assist, support and respect their families,¹⁵⁸ and possess strong values around family cohesion.¹⁵⁹

Unaccompanied asylum-seeking children have been observed to have a strong sense of duty towards their families.¹⁶⁰ An asylum-seeking child may have been selected by the family to seek protection abroad, and may have been instructed on what to say, or do, to increase the chances of gaining a secure status. The burden is on the child to “*get the details exactly right and keep them consistent – otherwise they will fail.*”¹⁶¹ The child’s ‘success’ may be seen as critical for the family’s future.

One expert has explained that as a result of this pressure, asylum-seeking children sometimes tell the authorities ‘thin’ stories they have devised, rather than their own ‘thick’ stories: “*while the thick stories might be multilayered and complex, it is the simpler thin stories that are perceived as being admissible to the receiving authorities. The thin stories are therefore purposefully constructed as an acceptable amalgam in compliance with international conventions related to the status of refugees.*”¹⁶²

Interviewers and decision-makers may be unable to relieve this pressure during their short encounters with asylum-seeking children, but they need to be aware of the heavy weight that some children carry.

¹⁵⁵ SH 05.

¹⁵⁶ SH 11.

¹⁵⁷ C. Grov, D. S. Bimbi, J. E. Nanin and J. T. Partons, ‘Race, Ethnicity, Gender and Generational Factors Associated with the Coming-out Process among Gay, Lesbian, and Bisexual Individuals’, *Journal of Sex Research*, vol. 43, no. 2, May 2006, pp. 115–21.

¹⁵⁸ A. Fuligni, V. Tseng and May Lann, ‘Attitudes Toward Family Obligations among American Adolescents with Asian, Latin American, and European Backgrounds’, *Child Development*, vol. 70, no. 4, 1999, pp. 1030–44.

¹⁵⁹ K. Kwak, ‘Adolescents and their Parents: A Review of Intergenerational Family Relations for Immigrant and Non-immigrant Families’, *Human Development*, vol. 46, 2003, pp. 115–36.

¹⁶⁰ P. Anderson, “‘You Don’t Belong Here in Germany ...’ On the Social Situation of Refugee Children in Germany”, *Journal of Refugee Studies*, vol. 14, no. 2, 2001, pp. 187–99 at p. 196.

¹⁶¹ C. Gross, ‘Struggling with Imaginaries of Trauma and Trust: The Refugee Experience in Switzerland’, *Culture, Medicine and Psychiatry*, vol. 28, 2004, pp. 151–67.

¹⁶² R. Kohli, ‘The Sound of Silence: Listening to What Asylum-Seeking Children Say and Do Not Say’, *British Journal of Social Work*, vol. 36, 2006, pp. 707–21 at p. 711.

6. The Individual and Contextual Circumstances of the Decision-Maker

This chapter would be incomplete if it did not address the fact that credibility assessment is the product of interaction between the applicant and the interviewer and/or decision-maker. The individual and contextual circumstances of the decision-maker are therefore also of significant importance to the process of credibility assessment.¹⁶³

Asylum applications are to be examined impartially and objectively, but there are many ways in which the individual and contextual circumstances of the decision-maker can influence the outcome of an application. One decision-maker, asked if preconceptions and stereotypes influenced her decisions, explained:

*“It would be strange otherwise. I am in a context with many beliefs about how a person should behave, what is reasonable. ... It is for us to try to see beyond that. ... I think the first step is to realize that one has many preconceptions and stereotypes, in order to overcome them, to become aware of one’s own thinking process.”*¹⁶⁴

A review of UK judges assessing adult asylum claims found that their appraisals were often based on assumptions about human behaviour, intentions, and ways of remembering and relating experiences that were not necessarily in line with current psychological science. There was also evidence of inconsistency between asylum decision-makers, suggesting subjectivity in credibility assessment and decision-making due to the assumptions held by individual decision-makers.¹⁶⁵

Although there is a growing body of literature on children in the asylum process, to date no research has focused on the impact of the decision-maker’s own beliefs, attitudes and experiences with children. Yet these no doubt play a role.

¹⁶³ As explained in Chapter 2, the interviewer is also the decision-maker in Austria. In Italy, the decision is made by a four-member panel, in which the interviewer participates. In the Netherlands, in all cases reviewed in this research, the interviewer and the decision-maker were two different people. In Sweden, the interviewer makes a recommendation to the decision-maker; both sign the decision. The interaction between the interviewer and the child is explored in Chapter 4. The focus here is on the decision-maker.

¹⁶⁴ SH 18.

¹⁶⁵ J. Herlihy, K. Gleeson and S. Turner, ‘What Assumptions about Human Behaviour Underlie Asylum Judgements?’ *International Journal of Refugee Law*, vol. 22, no. 3, 2010, pp. 351–66. The lack of consistency in asylum decision-making in the United States has been extensively studied in J. Ramji-Nogales, A. I. Schoenholtz and P. Schrag, ‘Refugee Roulette: Disparities in Asylum Adjudication’, *Stanford Law Review*, vol. 60, 2007, pp. 295–412.

6.1 State of mind and thinking process

Psychologists suggest that there are two processes by which decisions are made. One is active, mindful, and mentally demanding, while the other is quick, often unconscious and does not demand active mental processing.¹⁶⁶ A deliberate and concentrated approach to decision-making enables thorough consideration of the pertinent issues and facts. However, if the decision-maker has other mental demands, is experiencing high emotions, or even has low glucose levels, he or she is more likely to make decisions quickly without full consideration of the facts.¹⁶⁷

Faced with many decisions to make, it is natural to find short cuts by using intuition based on knowledge and previous experience, even though such a strategy may lead to erroneous conclusions. One study of adult asylum-seekers suggested that decision-makers drew from their own experiences to assess the applicants' responses to dangerous situations.¹⁶⁸ Similar research has not been replicated with children, but if decision-makers take the same approach, they may over- or under-estimate the capacities of a child at a particular developmental stage, for example imagining that the child can consider multiple perspectives and outcomes when he cannot, or underestimating the level of risk an adolescent may take. In one case observed in this research, a decision-maker commented on a Syrian boy's failure to take identity documents with him when he fled, wondering "*why did he not at least take some kind of identification with him? I understand, quick, quick ... but personally, I could not take such stress.*"¹⁶⁹

The distance between the decision-maker and the applicant in terms of culture and age influences the ability to assess an applicant's credibility. Research suggests that when a decision-maker is 'closer' in social distance to an applicant, he or she feels more able to judge deception¹⁷⁰ and is more likely to perceive the appellant as truthful.¹⁷¹ In reality, though, people – even within their own cultures – are on average only slightly better at determining a lie than if the decision were made by tossing a coin.¹⁷² One study found that, on the whole, professionals and the general public used the same indicators to detect lies, and did not differentiate between indicators for cases of adolescents versus adults.¹⁷³ Even when the person judging the deception was a professional (that is police, social worker or teacher) they were no more accurate – although they did report feeling more confident in their judgement.¹⁷⁴ The capacity to detect deception is further reduced when the individual being judged and the person doing the judging come from different cultures.¹⁷⁵

Judgement is affected by belief bias – the tendency to allow our pre-existing beliefs to influence our reasoning.¹⁷⁶ Our evaluation of the likelihood of an event is commonly based on how it conforms to our existing knowledge about that type of event. Furthermore, information that comes to mind more quickly

¹⁶⁶ S. Chaiken and Y. Trope, *Dual-process Theories in Social Psychology*, New York: Guilford Press, 1999; D. Kahneman, *Thinking, Fast and Slow*, New York: Farrar, Straus and Giroux, 2011.

¹⁶⁷ S. Danziger, J. Levav and L. Avnaim-Pesso, 'Extraneous Factors in Judicial Decisions', *Proceedings of the National Academy of Sciences of the United States of America*, early edition, 2010, 1–4; P. Jaffe, C. Crooks, B. Dunford-Jackson, and M. Town, 'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice', *Juvenile and Family Court Journal*, vol. 54, no. 4, 2009, pp. 1–9.

¹⁶⁸ J. Herlihy, K. Gleeson and S. Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgements?' *International Journal of Refugee Law*, vol. 22, no. 3, 2010, pp. 351–66.

¹⁶⁹ IV/006/SYR/M/17.

¹⁷⁰ C. Bond, A. Omar, A. Mahmoud and R. Bonser, 'Lie Detection across Cultures', *Journal of Nonverbal Behavior*, vol. 14, no. 3, 1990, pp. 189–204.

¹⁷¹ B. de Paulo, K. Charlton, H. Cooper, J. Lindsay and L. Muhlenbruck, 'The Accuracy-Confidence Correlation in the Detection of Deception', *Personality and Social Psychology Review*, vol. 1, no. 4, 1997, pp. 346–57.

¹⁷² A. Vrij and P. Anders Granhag, 'Eliciting Cues to Deception and Truth: What Matters are the Questions Asked', *Journal of Applied Research in Memory and Cognition*, vol. 1, 2012, pp. 110–17.

¹⁷³ A. Vrij, L. Akehurst and S. Knight, 'Police Officers', Social Workers', Teachers' and the General Public's Beliefs about Deception in Children, Adolescents and Adults', *Legal and Criminological Psychology*, vol. 11, 2006, pp. 297–312.

¹⁷⁴ B. de Paulo, K. Charlton, H. Cooper, J. Lindsay and L. Muhlenbruck, 'The Accuracy-Confidence Correlation in the Detection of Deception', *Personality and Social Psychology Review*, vol. 1, no. 4, 1997, pp. 346–57.

¹⁷⁵ C. Bond, A. Omar, A. Mahmoud and R. Bonser, 'Lie Detection across Cultures', *Journal of Nonverbal Behavior*, vol. 14, no. 3, 1990, pp. 189–204.

¹⁷⁶ S. Chaiken and Y. Trope, *Dual-process Theories in Social Psychology*, New York: Guilford Press, 1999.

(for instance, because it has occurred previously, is recent, or is particularly distinct) is likely to be viewed as more common. There is also a tendency for people to maintain their initial beliefs, even if they learn of evidence against them. This is pertinent to asylum claims, for decision-makers rarely receive follow-up information on whether or not an applicant's claim was true.

Another unconscious influence on decision-making is known as the 'halo effect'. This is where first impressions of an individual – usually positive ones – influence subsequent judgements of that person, even in the absence of information to support the initial impressions. When first impressions are negative, this is sometimes referred to as a 'reverse halo effect'. The halo effect is powerful and may lead to sound information being ignored.¹⁷⁷

In general, there is a natural tendency for people to seek to confirm their beliefs and initial impressions, whether positive or negative. A conscious effort is needed not to be influenced by first impressions, but rather to gather relevant information. One asylum policy manager explained:

*“For the 15th time the adjudicator is presented with the identical story. It is clear to him that it can't be true. The question then is: how does he get to what actually happened, and what the reason was to flee? If the adjudicator takes his task seriously ... then he will invest time to overcome this barrier and get to the actual merits. That means to build so much trust with the minor that the minor is ready to set aside the story taught by his parents, the smugglers, whomever, and to tell the truth.”*¹⁷⁸

6.2 Beliefs about children

In the legal setting, the view prevailed for many years that children were unreliable witnesses. Children were thought to have limited capacity for observation, recollection, and communication of evidence. They were believed to be suggestible, prone to fantasy, and not to understand what it means to take an oath to tell the truth.¹⁷⁹ Even though children are now widely accepted as witnesses in both civil and criminal cases, some of these beliefs may still pervade some judges' assumptions.¹⁸⁰

Adults' views about the capabilities and motivations of children may vary according to the decision-maker's own exposure to young people. One study (not involving asylum-seeking children) showed that older adults who had had more exposure to children were more sensitive to children's accounts and less prone to bias.¹⁸¹

Adults' views may also vary depending on the child's age. A review of 22 studies of child sexual abuse cases found that adolescents were generally viewed as less credible than young children; this was attributed to the belief that adolescents are intentionally deceitful if they wish to manipulate the situation or gain attention.¹⁸² Another study also found that judges generally view adolescents as less trustworthy than young children, but due to their less developed memory and communication skills, they are more likely than adults to make

¹⁷⁷ R. Nisbett and T. Wilson, 'The Halo Effect: Evidence for Unconscious Alteration of Judgments', *Journal of Personality and Social Psychology*, vol. 35, no. 4, 1977, pp. 250–6.

¹⁷⁸ SH 89.

¹⁷⁹ J. Heydon, *Evidence: Cases and Materials*, 2nd edition, London: Butterworths, 1984, p. 84.

¹⁸⁰ O. Nikonova and J. Ogloff, 'Mock Jurors' Perceptions of Child Witnesses: The Impact of Judicial Warning', *Canadian Journal of Behavioural Science*, vol. 37, no. 1, 2005, pp. 1–19.

¹⁸¹ S. Block, D. Shestowsky, D. Segovia, G. Goodman et al., '"That Never Happened": Adults' Discernment of Children's True and False Memory Reports', *Law and Human Behavior*, vol. 36, no. 5, 2012, pp. 365–74.

¹⁸² S. 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*, vol. 22, no. 5, 2013, pp. 593–611.



errors.¹⁸³ A third study of psychiatric clinicians found that adolescents' credibility was believed to rise as they grew older, when they acquired more cognitive ability and exhibited fewer behavioural problems.¹⁸⁴

Decision-makers often hold beliefs about what an applicant ought to know about the asylum process, and how an applicant ought to behave. These beliefs can influence their approach to the applicant.¹⁸⁵ Such research could usefully be replicated with children to see whether similar assumptions prevail. It appears that with children there is the risk of a 'Catch-22' situation: if an adult expects a child to have little knowledge of the asylum system, an eloquent child may be suspected of having been 'coached'. Alternatively, if the child is not able to adhere to the procedure, he or she may be judged as wilfully obstructive or deceitful.

To address this problem, and to avoid erroneous assumptions about the child's level of cooperation and credibility, it is important for decision-makers to consider all information available on the child's background, developmental stage and other individual circumstances, as well as the degree to which the child has been properly informed about the procedure.

¹⁸³ N. Bala, K. Ramakrishnan, R. Lindsay and K. Lee, 'Judicial Assessment of Credibility of Child Witnesses', *Alberta Law Review*, vol. 42, no. 4, 2005, pp. 995–1017.

¹⁸⁴ E. Youngstrom, J. Youngstrom, A. Freeman, A. De Los Reyes et al., 'Informants Are Not All Equal: Predictors and Correlates of Clinician Judgments about Caregiver and Youth Credibility', *Journal of Child and Adolescent Psychopharmacology*, vol. 21 no. 5, 2011, pp. 407–15.

¹⁸⁵ J. Herlihy, K. Gleeson and S. Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgements?', *International Journal of Refugee Law*, vol. 22, no. 3, 2010, pp. 351–66.

6.3 Burnout and vicarious trauma

Burnout and vicarious trauma are emotion-based afflictions that may affect someone's decision-making capacity. Burnout refers to emotional overload and exhaustion arising from feeling overwhelmed.¹⁸⁶ This can result in apathy, irritability, self-blame, feelings of failure and an uncaring or cynical attitude towards work.¹⁸⁷ One supervisor recognized the need to provide encouragement. When staff members handling child asylum claims were upset by what they heard, she told them *"I fully understand that you find it difficult. I also believe that it is a good thing to be affected; it shows that you consider why they have come here. You are not hardened or cynical, but human."*¹⁸⁸

Vicarious trauma describes the development of symptoms consistent with post-traumatic stress disorder (such as avoidance, emotional numbing or tension) in response to exposure to another's trauma accounts.¹⁸⁹ A person's vulnerability to vicarious trauma is influenced by his or her own situation, including professional isolation, heavy workload, and past experiences similar to those described in the testimony.¹⁹⁰ Asylum-authority staff confirmed the need for support: *"The first years I worked here, I had a need to talk about every interview. ... I don't have the same need to talk now about everything ... but it is still important to get support to handle everything that you hear and see."*¹⁹¹

Traditionally, emotions have been viewed as superfluous to legal decisions, and most guiding principles of 'professionalism' still fail to acknowledge the role of emotion in decision-making processes. If the profession prioritizes 'objectivity' and 'professionalism' (at the expense of empathy), there may be little space left to recognize or address such emotion.

It is important not to neglect the fact that distress and high emotion are central to most claims in asylum cases and may influence the decision-maker's thinking processes. Certain emotions, such as sadness, are associated implicitly with truthfulness. A silent or aggressive applicant may be just as credible as one who is crying,¹⁹² but may trigger a different emotional reaction in the decision-maker.

A study of judges found that 63 per cent reported some aspect of vicarious trauma. The most frequently reported complaints were fatigue, difficulty concentrating, lack of empathy, intolerance of others, and emotional distress.¹⁹³ It has been suggested that decision-makers may protect themselves from potentially distressing emotions by detachment and denial.¹⁹⁴

Such responses to applicants' stories are concerning from the perspective of the decision-makers' well-being and they may also have a deleterious effect on the interview and decision-making process. Decision-makers' efforts not to get emotionally involved can develop into a dismissive or sceptical attitude.¹⁹⁵ An examination of 40 protection determinations in Canada found significant levels of avoidance, lack of empathy, prejudice,

¹⁸⁶ Jaffe, C. Crooks, B. Dunford-Jackson, and M. Town, 'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice', *Juvenile and Family Court Journal*, vol. 54, no. 4, 2009, pp. 1–9.

¹⁸⁷ C. Pross, 'Burnout, Vicarious Traumatization and its Prevention', *Torture*, vol. 16, 2006, pp. 1–9.

¹⁸⁸ SH 22.

¹⁸⁹ C. Pross, 'Burnout, Vicarious Traumatization and its Prevention', *Torture*, vol. 16, 2006, pp. 1–9.

¹⁹⁰ Jaffe, C. Crooks, B. Dunford-Jackson, and M. Town, 'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice', *Juvenile and Family Court Journal*, vol. 54, no. 4, 2009, pp. 1–9.

¹⁹¹ SH 22.

¹⁹² E. Wessel, S. Magnussen and A. Melinder, 'Expressed Emotions and Perceived Credibility of Child Mock Victims Disclosing Physical Abuse', *Applied Cognitive Psychology*, vol. 27, 2013, pp. 611–16.

¹⁹³ Jaffe, C. Crooks, B. Dunford-Jackson, and M. Town, 'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice', *Juvenile and Family Court Journal*, vol. 54, no. 4, 2009, pp. 1–9.

¹⁹⁴ C. Baillot, S. Cowan and V. Munro, 'Second-hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context', *Journal of Law and Society*, vol. 40, no. 4, 2013, pp. 509–40.

¹⁹⁵ *Ibid.*, p. 530.

cynicism, denial and trivialization of applicants' accounts, which the authors suggest can be attributed to vicarious traumatization.¹⁹⁶

While no research has been conducted on the impact on interviewers and decision-makers of hearing children's asylum claims, secondary trauma among child-welfare workers has been well-documented, with the extreme vulnerability of their clients identified as one of the causes.¹⁹⁷

Detachment or denial may also prevent interviewers from eliciting details of a particular event, as they unconsciously may wish to protect themselves from hearing it. This lack of detail could then be used to argue that the account was fabricated. This emotional barrier can also result in 'case hardening', where due to hearing many disturbing cases, the less extreme ones can be judged as unimportant. Inability to recognize the gravity of events may also lead to an aggressive style of interviewing that could increase the applicant's distress and be more likely to yield inaccurate responses.¹⁹⁸

Remaining engaged with the applicant's distress will enable an interviewer to offer the child breaks in order to provide the necessary emotional space during the recounting of traumatic events. This, in turn, is likely to yield more accurate information to inform the decision.

Mechanisms are needed to support interviewers and decision-makers to deal with the pressures and emotional impacts of their work with asylum-seeking children.

¹⁹⁶ C. Rousseau, F. Crepeau, P. Foxen and F. Houle, 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration Refugee Board', *Journal of Refugee Studies*, vol. 15, no. 1, 2002, pp. 43–70.

¹⁹⁷ M. Horowitz, 'Work-related Trauma Effects in Child Protection Social Workers', *Journal of Social Services Research*, vol. 32, no. 3, 2006, pp. 1–18.

¹⁹⁸ G. H. Gudjonsson and L. Henry, 'Child and Adult Witnesses with Intellectual Disability: The Importance of Suggestibility', *Legal and Criminological Psychology*, vol. 8, no. 2, September 2003, pp. 241–52; I. Hershkowitz, I. Orbach, M. E. Lamb, K. J. Sternberg and D. Horowitz, 'Dynamics of Forensic Interviews with Suspected Abuse Victims Who Do Not Disclose Abuse', *Child Abuse and Neglect*, vol. 30, 2006, pp. 753–69.

7. Summing Up

This chapter has reviewed factors pertinent to credibility assessment in asylum cases, relating both to asylum-seeking children and to decision-makers. It has highlighted the need to consider the knowledge of many disciplines, as these factors extend well beyond the field of refugee law. For example, when listening to a child, it is important to consider his or her stage of development, memory capacity and barriers to disclosure before making judgements about credibility. At the same time, an interviewer's views about children, his or her own emotional state, and previous experiences with children may all play a role in the types of questions asked and the decisions reached.

While this can seem like an overwhelming demand, in the context of such important decisions it is this very type of nuanced and mindful thinking that is required. Pulling together the knowledge from different disciplines, and thereby making more information available, will ultimately improve credibility assessments and strengthen decision-making.

CHAPTER 4

Gathering the Facts

This chapter, which is based on the cases reviewed in this research, looks at how the relevant facts of asylum applications presented by unaccompanied and separated children are gathered. The process of gathering the facts is part of the broader task of credibility assessment. Does this process differ when the applicant is a child? What is a child expected to contribute towards substantiating the application? How do the authorities share this duty when the applicant is a child?

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1. Introduction

It is recognized cross-nationally that young people are entitled to special consideration when they are involved with the justice system, whether as a defendant, victim, witness or as a child caught up in a family dispute.¹ As explained in Chapter 2, EU law gives special consideration to asylum applicants who are under the age of 18, thus recognizing that even though most asylum-seeking children are adolescents, their age and level of maturity still need to be taken into account at all stages of the asylum procedure.²

Gathering the facts of an asylum application is of course different from gathering evidence in many other types of proceedings. Asylum-seekers generally have little if any documentary evidence to present. In most asylum cases, the only evidence consists of oral statements of applicants whose backgrounds are very different from those of the officials hearing their claims. Asylum-seekers may have suffered trauma, which affects their ability to remember or to relate past experiences, and, as discussed in Chapter 5, they almost always have to communicate through an interpreter. One expert has described asylum-seekers as “*sandwiched between the expectations of the law and their own limited abilities to meet those expectations.*”³

It can be even more difficult to gather the facts when the applicant is a child. The asylum procedure is a complex legal process, and it takes place in an environment that is foreign to the child. The process may be bewildering and intimidating, especially for a child not accompanied by family members. A child is less likely than an adult to have any documentary evidence, and may be unable to provide a detailed and consistent account of his or her reasons for seeking international protection, particularly if the decision to leave the country of origin was made by the child’s parents or other relatives. Some children, aware of how much their parents have invested in their future, feel tremendous pressure and responsibility to ‘succeed’ in their bid for asylum.

Under the best of circumstances, interviewing children requires sensitivity to their age and maturity, along with other individual and contextual circumstances. In asylum proceedings, the child is asked to speak about personal and sometimes very intimate experiences to an adult who is a total stranger, and the cultural divide between the child and the interviewer is likely to be wide. In many cases, the events being recounted took place when the child was very young and, in some cases, they involved other people, such as parents or siblings, rather than the child directly. For all these reasons, gathering the facts of asylum applications presented by unaccompanied children is unlike other interrogative processes, and merits particular attention and care.⁴

¹ N. Hazel, *Cross-national Comparison of Youth Justice*, University of Salford (UK), 2008, p. 44. Adapting justice systems to the specific needs and vulnerabilities of children is a stated priority at European level of both the EU and the Council of Europe.

² The US Supreme Court has recognized that adolescents are different from adults, noting that they are ‘*more vulnerable or susceptible to negative influences and outside pressures*’, and ‘*the character of a juvenile is not as well formed as that of an adult*’ (*Roper v Simmons*, 543 US 551, 125 S.Ct. 1185, 2005).

³ P. Showler, *Refugee Sandwich: Stories of Exile and Asylum*, Montreal: McGill-Queen’s University Press, 2006, p. xvii.

⁴ ‘*A child, by reason of his lack of knowledge, experience and maturity, cannot be expected to comply with procedures in the same way as an adult*’, *R (on the application of Blerim Mlloja) v. Secretary of State for the Home Department [2005] EWHC 2833 (Admin)*.

2. Underlying principles

Of the four core principles of the Convention on the Rights of the Child, two are especially pertinent whenever evidence is elicited from children, including in asylum proceedings: these are the obligation of the authorities to make the child's best interests a primary consideration in all actions concerning the child, and the right of the child to be heard.⁵ All European countries have signed and ratified the CRC⁶ and the State party must take "*all appropriate legislative, administrative and other measures*" to implement the Convention.⁷ The UN Committee on the Rights of the Child has provided authoritative guidance to states on implementation measures.⁸

2.1 Best interests and the right to be heard

The Convention on the Rights of the Child (Article 3 (1)) provides that "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"

This principle is reiterated in the EU Charter of Fundamental Rights, and in each of the asylum instruments.⁹

The Committee on the Rights of the Child has explained that the best interests principle is a substantive right and a rule of procedure, as well as a principle.¹⁰ How it relates to decisions on the international protection needs of children, and on durable solutions for children, is beyond the scope of this research, and is the subject of ongoing discussion on the part of experts and of scrutiny by courts, at both national and regional levels.¹¹ Much of that debate concerns the extent to which a child's best interests are an independent factor in determining whether an asylum-seeking or migrant child will be permitted to remain, and how to balance the best interests of the child against other potentially competing interests.

⁵ Sweden's Migration Court of Appeal, in Judgment UM 2437-13 (MIG 2014:1) of 11 February 2014 states that the overarching principles of a child's best interest and right to be heard should permeate any case where the person concerned is considered to be a child.

⁶ *Convention on the Rights of the Child*, Articles 3 and 12.

⁷ CRC, Article 4. The countries of focus in this research implement the CRC in varying ways. In Austria, the *Federal Constitutional Act on Children's Rights* (2011) incorporates certain articles of the CRC into national law. In Italy, the CRC forms part of domestic law and prevails over national legislation. In the Netherlands and Sweden, the CRC has not been incorporated into national law, but national laws are interpreted in the light of international obligations (UNICEF, *Law Reform and the Implementation of the Convention on the Rights of the Child*, Innocenti Research Centre, December 2007, pp. 6–7). At the time of completion of this report, there was renewed discussion in Sweden about incorporation of the CRC into national law.

⁸ UN Committee on the Rights of the Child, *General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5.

⁹ Charter of Fundamental Rights of the European Union, *Official Journal of the European Communities*, 18.12.2000, C/364/1, Article 24 (2); Dublin Regulation (recast), Recitals 13, 16, 24, 35, Article 2 (k), Article 6 (1), (2) and (4), Article 8 (1), (2), (3), (4) and (5), Article 20 (3); *Asylum Procedures Directive (recast)*, Recital 33, Article 2 (n), and Article 25 (1) and (6); *Qualification Directive (recast)*, Recital 18, 19 and 38, Article 25 (5), Article 31 (4) and (5); *Reception Conditions Directive (recast)*, Recital 9 and 22, Articles 2 (j), 10 (2), 23 (1), (2) and (5), 24 (1), (2) and (3).

¹⁰ UN Committee on the Rights of the Child, *General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, para. 1)*, 29 May 2013, CRC/C/GC/14.

¹¹ See UNHCR and UNICEF, *Safe and Sound: What States Can Do to Ensure Respect for The Best Interests of Unaccompanied and Separated Children in Europe*, October 2014; UNICEF and the Office of the UN High Commissioner for Human Rights, *Judicial Implementation of Article 3 of the Convention on the Rights of the Child in Europe. The case of migrant children, including unaccompanied children*, June 2012. For further discussion of the application of the 'best interests' principle to asylum-seeking children, and relevant jurisprudence, see S. Bolton, "'Best Interests': Safeguarding and Promoting the Welfare of Children in Immigration Law and Practice", in S. Bolton, K. Laur, S. S. Luh, J. Peirce and K. Yeo, *Working with Refugee Children: Current Issues in Best Practice* (London: Immigration Law Practitioners' Association, 2011).

It is nevertheless undisputed that the principle of best interests must inform the procedure itself, and that it underpins the safeguards afforded to children in the EU asylum instruments that enable them to exercise their right to participate and to be heard. The right to be heard applies to every child who is “capable of forming his or her own views”.¹² As the Committee on the Rights of the Child explained:

*“Age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view.”*¹³

The Asylum Procedures Directive assures applicants for international protection the right to a personal interview.¹⁴ All Member States of focus in this research interview unaccompanied child claimants, although legal or administrative provisions make clear that, in view of the child’s individual circumstances and best interests, interviewing a child must not be inappropriate.¹⁵

The four countries of focus in this research all acknowledge the core principle of the best interests of the child in law and policy documents. The Asylum Procedures Directive states clearly that “the best interests of the child shall be a primary consideration for Member States when implementing this Directive.”¹⁶

How the principle is put into practice was observed to vary. One stakeholder, an adjudicator, said that “the best interest of the child is just common sense. It is already in the fabric of society.”¹⁷

A standard paragraph appearing in decisions in one country of focus reads as follows. “It is considered that the best interests of the child are already a primary consideration in the way the policies for minors are made.”¹⁸

Good practice was observed in the more structured approach taken in Sweden, where a ‘child impact analysis’ must be completed in every case. This flows from the overall goal of the Swedish Migration Board’s ‘Child Policy’, to ensure that the best interests of the child are considered and that the child’s right to participate and to be heard is assured.¹⁹ The ‘child impact analysis’ is not a separate step in the procedure but rather, a way of documenting the measures that have been taken in the course of the procedure to consider the child’s best interests.²⁰ The challenge remains to ensure that this is not simply a pro forma process, and that a holistic approach is taken to this analysis.

¹² CRC, Article 12 (1).

¹³ UN Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, para. 29.

¹⁴ *Asylum Procedures Directive (recast)*, Article 14 (1). The last sentence in this subparagraph states that ‘Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.’ No situations are known where unaccompanied children have been denied this opportunity, which would indeed be a violation of their right to be heard.

¹⁵ In Austria, children are interviewed as long as they are able to give testimony (General Administrative Procedure Act, Article 48, para. 1). In cases of children under 14, their legal representative can be heard instead, or witnesses can be heard. If necessary (for instance in the case of very young children), an expert opinion on their ability to testify should be obtained. In Italy, there is no age limit for asylum interviews. In the Netherlands, Aliens Circular C.1/2.5 provides that unaccompanied children under 12 are to be interviewed only to collect basic biographical data, not on the substance of the claim. The Swedish Aliens Act, Chapter 1, § 11 provides that a child applying for residence must be heard, unless it would be inappropriate to do so. During the drafting of the Act, it was indicated that it might be inappropriate to interview a very young child or one suffering from mental illness.

¹⁶ *Asylum Procedures Directive (recast)*, Article 25 (6).

¹⁷ SH 05.

¹⁸ D/170/AFG/M/16; D/174/PAK/M/16.

¹⁹ Swedish Migration Board, *Child Policy*, GDA 6/11 of 29 May 2011, foreword by the (former) Director General, p. 2.

²⁰ Professor Margrite Kalverboer has recommended integrating child-focused social welfare reports into decision-making through the use of a Best Interest of the Child Questionnaire. See M. E. Kalverboer et al., ‘Children First? The Significance of Child-Oriented Social Welfare Reports for Legal Decision-Making in Asylum Procedures’, *International Journal of Child & Family Welfare*, vol. 14, no. 1 (January–March 2011), pp. 2–19. This tool assesses the potential impact of different decision outcomes on a child’s developmental prospects and rights. UNHCR also recommends a holistic approach to this in its October 2014 publication entitled *Safe and Sound: What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe*.



2.2 The ‘shared’ duty to substantiate the application

The Qualification Directive provides that “*Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection.*”²¹ This duty is derived from the general legal principle that the person who is making an assertion or claiming a right has the burden of proving it.²²

Article 4 (2) of the Qualification Directive sets out the elements needed to substantiate a claim, with no distinction between claims presented by adults and by children. These elements include statements and documents relating to the individual’s *person* (age, background, identity, nationality, previous residence, previous asylum applications, travel routes, travel documents),²³ and those related to the individual’s *reasons* for seeking protection.

An asylum-seeker is expected to make a genuine effort to substantiate his or her application.²⁴ However, because of the particular circumstances in which asylum-seekers find themselves, the determining authority shares the duty to ascertain the facts.²⁵ National law, jurisprudence and administrative guidance confirm

²¹ *Qualification Directive (recast)* Article 4 (1). The *Beyond Proof* report points out that the term ‘substantiate’ is not defined in the *Qualification Directive*. UNHCR understands it to mean to provide statements and documentary or other evidence in support of an application.

²² *UNHCR Handbook*, para. 196: ‘It is a general legal principle that the burden of proof lies on the person submitting a claim.’ The *Qualification Directive (recast)* does not use the term ‘burden of proof’, but speaks instead of ‘substantiating’ the claim. That terminology is also used in this report.

²³ The Directive does not define ‘identity’. The Swedish Migration Board has stated that a person’s identity ‘consists of name, date of birth and, as a rule, citizenship’ (SMB, *Judicial Position on Establishing Identity in Asylum Claims* RCI 08/2013 of 31 May 2013).

²⁴ *UNHCR Handbook*, paras. 195 and 203.

²⁵ UNHCR, *Note on the Burden and Standard of Proof in Refugee Claims*, para. 6.

that the authorities should assist and support an asylum-seeker in substantiating his or her application.²⁶ One court has described the duty of the authorities to investigate, set out in general administrative law, as being *extended* in asylum cases, given the protection issues at stake.²⁷

The Court of Justice of the European Union has explained the ‘shared duty’ in the following terms: “*if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant ... so that all elements needed to substantiate the application may be assembled.*”²⁸

A child is likely to have more difficulty than an adult substantiating his or her application with elements that are ‘complete, up to date and relevant’, especially if the child left his country of origin at a young age and/or has an incomplete understanding of events there.²⁹ UNHCR has stated that, “*although the burden of proof is normally shared between the examiner and the applicant in adult claims, it may be necessary for the examiner to assume a greater burden of proof in children’s claims, especially if the child concerned is unaccompanied.*”³⁰

One determining authority official put it this way:

*“Of course our duty to substantiate is increased when it comes to unaccompanied children. For example, at the moment there are many children coming from Syria who usually have identity documents, but for many countries that is not the case. And then, there are many minors who have difficulty to know what a reason for asylum is, and need help to present their account and reasons. The legal counsel will be at hand to provide assistance, but we as [determining] authority have, the way I see it, a more far-reaching responsibility than in adults’ claims.”*³¹

The following sections look at how states carry out this ‘enhanced’ duty to help children to substantiate their claims.

²⁶ For instance, Article 18 para. 1 Austrian Asylum Act (2005), amended, outlines the shared duty to substantiate the asylum claim and mentions that, if necessary, evidence is also to be procured *ex officio*. Sweden’s Migration Court of Appeal outlined the shared duty to substantiate the application in its first judgment, noting that the investigator ‘*may have to use all means at hand to produce adequate evidence for the applicant.*’ (Judgment UM 122-06 of 18 September 2006, MIG 2006:01).

²⁷ Swedish Migration Court of Appeal, Judgment UM 5928-11 of 25 April 2012, MIG 2012:18.

²⁸ *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 65.

²⁹ On the assessment of evidence provided by a child the UK Upper Tribunal has cautioned: ‘*First, and of central importance, is the fact that the appellant was 14 years of age when he left Afghanistan. Due allowance must be made for his age at the time of the events in question.*’ *AA (unattended children) Afghanistan CG [2-12] UKUT 16 (IAC)*, 1 February 2012, at 110.

³⁰ UNHCR, *Guidelines on Child Asylum Claims*, para. 73. The Swedish Migration Board’s Judicial Position on Age Assessment (RCI 13/2014) uses similar language, advising that with respect to children, ‘*the Board’s duty is greater than for adults*’ (section 3.1.3).

³¹ SH 19.

3. Procedural Safeguards in Children's Cases

The implementation of a number of procedural safeguards in cases of unaccompanied children is one way in which the determining authorities carry out their part of the 'shared duty' to substantiate the claim. Mandatory procedural safeguards are set out in Article 25 of the recast Asylum Procedures Directive. These include the appointment of a representative (guardian), providing children (and their representatives) with legal and procedural information about the procedure, and ensuring that interviewers and decision-makers have "*the necessary knowledge of the special needs of minors*".³²

National jurisprudence affirms the importance of safeguards such as these for children's asylum procedures: "*procedural and substantive safeguards are the most effective means of obtaining the child's full and reliable account of the reasons why he is here and ... those safeguards should include the presence of a responsible adult when asylum is being discussed.*"³³

A stakeholder expressed a similar view. "*The extent to which children express themselves during the interview depends ... on the preparation and support they receive before going to the interview, and the person who is there to support them.*"³⁴

3.1 The role of the guardian

Among other duties, the guardian should help the child to understand what is expected of him or her in the asylum procedure.³⁵ This is particularly important in contexts where the child is not (or not yet) assisted by legal counsel. In three of the four countries of focus in this research (Austria, the Netherlands and Sweden), unaccompanied children are also entitled to legal counsel in the asylum procedure, but this is not necessarily the case across the EU. In some countries, the guardian is responsible for finding a legal adviser for the child.³⁶

The guardian should have the opportunity to inform the child about the meaning and possible consequences of the asylum interview, and to attend the interview.³⁷ UNHCR notes that children require "*sufficient time in which to prepare for and reflect on rendering the account of their experiences. They will need time to build trusting relationships with their guardian and other professional staff and to feel safe and secure.*"³⁸ It

³² Guarantees for unaccompanied minors are set out in Article 17 of the original version of the *Asylum Procedures Directive*. The *Reception Conditions Directive (recast)* also requires the appointment of a guardian (Article 24 (1)), as does the recast *Dublin Regulation* (Article 6 (2)). The term used in all of these instruments is 'representative'. This report uses the term 'guardian' to avoid confusion with legal counsel.

³³ Lord Justice Black in *A.N. (a child) and F.A.(a child) v SSHD* [2012] EWCA Civ 1636 at para. 122.

³⁴ SH 50.

³⁵ A helpful enumeration of the guardian's tasks, albeit related to child victims of trafficking, is contained in: European Commission and the Fundamental Rights Agency, *Guardianship for Children Deprived of Parental Care. A Handbook to Reinforce Guardianship Systems to Cater for the Specific Needs of Child Victims of Trafficking*, Luxembourg, Publications Office of the European Union, 2014, pp. 103–5. This followed a 2011 report by Martine Goeman et al., *Core Standards for Guardians of Separated Children in Europe: Goals for Guardians and Authorities*, Defence for Children–ECPAT the Netherlands, Leiden, 2010.

³⁶ See European Council on Refugees and Exiles, *Right to Justice: Quality Legal Assistance for Unaccompanied Children*, Comparative Report, Brussels, 2014.

³⁷ *Asylum Procedures Directive (recast)*, Article 25 (1) (b).

³⁸ UNHCR, *Guidelines on Child Asylum Claims*, para. 66.

was observed that this was not always the case, owing to delay in the appointment of a guardian, lack of proper qualifications, or a caseload that was too large to permit a guardian to engage with each child in a meaningful way.

Research conducted by the EU's Agency for Fundamental Rights found that unaccompanied asylum-seeking children were often unaware of the role of the guardian and did not know who their guardian was, or indeed whether they had one.³⁹ In some cases, the guardians themselves asked for clarification of their role. With the adoption of the recast Dublin Regulation, there is a need for guardians to have knowledge about that particular legal framework as well.⁴⁰ Stakeholders expressed concern about the variable quality of guardians in terms of their knowledge of the asylum procedure, and were supportive of initiatives to improve the qualifications of guardians.⁴¹

The role of the guardian at the asylum interview was observed to differ not only from country to country but also from case to case. In some cases, the guardian was able to bring forth information about the child's living situation, mental health, and schooling,⁴² and in other cases about the asylum reasons.⁴³ In still other cases the guardian gave the child important emotional support.⁴⁴ It was noted that when a guardian present at the interview was familiar with the child, he or she could play a constructive role not only in putting the child at ease, but in clarifying facts and potential misunderstandings. One guardian explained:

"A guardian who knows the child is a 'trump card', otherwise the child is alone in the interview, and I see the difference. ... When I know the story of the child I am also able to identify inconsistencies with the written statements ... and ask for a break so as to talk to the child and clarify."⁴⁵

A study on child witnesses at the International Criminal Court looked at measures to improve the quality and reliability of their testimony. It considered the benefits of preparation, of the presence of a support person and of using specialized intermediaries to help a child communicate with the court.⁴⁶ While views may differ about the extent to which asylum-seeking children should be assisted to prepare for their interviews, and there are understandable concerns about 'coaching', it should not be assumed that children, even older adolescents, necessarily understand the concept of international protection, the various stages of the procedure, the importance of the asylum interview or their own rights and obligations.

3.2 Information about the procedure

The Asylum Procedures Directive requires Member States to provide asylum applicants, including unaccompanied children, with information about the asylum procedure, their rights and obligations, and the consequences of not cooperating with the authorities. It does not provide guidance on how (or by whom) this is to be done in the case of child claimants.⁴⁷

³⁹ European Union Fundamental Rights Agency, *Separated, Asylum-seeking Children in European Union Member States*, Comparative Report, Vienna, 2010, p. 9.

⁴⁰ *Dublin Regulation (recast)*, Article 6 (b). To clarify the role of guardians and public counsel in Dublin cases, the Swedish Migration Board issued guidance on the subject in the form of a '*Judicial position regarding guardians and public counsel for UASCs in cases where the Dublin Regulation applies*', RCI 07/2014 (14 January 2014).

⁴¹ SH 19, SH 22, SH 29, SH 30, SH 31, SH 44, SH 52, SH 55, SH 65, SH 70.

⁴² IV/61/GMB/M/17, IV/65/EGY/M/16, IV/52, SEN/M/17.

⁴³ D/118/AFG/M/16.

⁴⁴ D/127/AFG/M/16, IV/53/SEN/M/17, IV/57/SOM/M/17, IV/63/EGY/M/15, IV 64/GHA/M/17.

⁴⁵ SH 63.

⁴⁶ S. Beresford, 'Child Witnesses and the International Criminal Justice System: Does the International Criminal Court Protect the Most Vulnerable?' *Journal of International Criminal Justice*, vol. 3, no. 3, 2005, pp. 721–48.

⁴⁷ *Asylum Procedures Directive (recast)*, Article 12 (a) and Article 25 (4). In contrast, Article 4 (3) of the Dublin Regulation (recast) requires the Commission to prepare a specific information leaflet for unaccompanied children, to which Member States can add country-specific elements. The text of that leaflet is in Annex XI to *Commission Implementing Regulation (EU) No. 118/2014* of 30 January 2014.

In the countries of focus in this research, law and administrative instructions stipulate that applicants should be informed about the procedure, time limits, the purpose of the interview, the meaning of confidentiality, the obligation to cooperate and to give truthful testimony, and how to submit documents to substantiate their claim.⁴⁸ Good practice was noted in Austria, where instructions for adjudicators stress that information about the procedure and what is expected of the applicant has particular importance in children's cases.⁴⁹

The research found that oral and/or written information on the asylum procedure was indeed provided to asylum-seeking children, but that the timing, content and 'child-friendliness' of this information varied widely. Some stakeholders were not persuaded that the information was child-appropriate – “*what does an adolescent understand the 'obligation to cooperate' means?*”⁵⁰ or “*my experience with the official information leaflets is that if the children don't understand them, they don't look at them again.*”⁵¹

In many cases, explanations about the procedure were provided to children at the start of the asylum interview, complementing written and oral information given before the interview. However, some interviews were observed at which no explanations were provided. At others, explanations were given but it was not always evident how much the child actually understood, especially when information on the procedure was read aloud from a prepared text using 'adult' language, or when the interviewer simply instructed the interpreter to give the child the 'usual' explanation.⁵²

Children did not always appear to grasp the importance of the interview, as for instance in the case of a boy who asked whether the interview would be over quickly, because he had a language class to attend.⁵³ Stakeholders working with children confirmed that they often had to meet a child several times before the child understood the meaning of asylum, the importance of the interview, and what was expected of him or her.⁵⁴ Good practice was observed where, at the outset of the asylum interview, the interviewer explained the roles of everyone in the room and then invited the child to give feedback by confirming in his or her own words what he or she understood to be the purpose of the interview.⁵⁵

In some countries the child may be questioned (on identity, age, flight route, and whereabouts of family) *before* receiving information on the procedure, and/or before a guardian or legal adviser has been appointed. This is of concern because inconsistencies between initial questioning of a child and subsequent interviews on the merits of the claim are frequently considered as evidence of a lack of credibility.⁵⁶

⁴⁸ Austria: Asylum Act (2005), amended, Article 15, para. 4 and Article 17, para 9. Also, BFA, *Binding Instruction on Interviews*, p. 38. Netherlands: *Aliens Decree*, Article 3.43a. Italy, *Legislative Decree* 25/2008, Article 129 (4); Sweden, *Aliens Ordinance* (SFS 2006: 97), Chapter 8, § 10 (e).

⁴⁹ Austria, BFA, *Binding Instruction on Interviews*, p. 50.

⁵⁰ SH 86.

⁵¹ SH 83.

⁵² IV/51/AFG/M/17, IV/53/SEN/M/17, IV/54/MLI/M/17, IV/57/SOM/M/17, IV/62/NGA/M/20, IV/64/GHA/M/17.

⁵³ IV/02/TUR/M/17.

⁵⁴ SH 50, SH 61, SH 63, SH 69, SH 70, SH 74.

⁵⁵ IV/102/DZA/M/17; IV/112/MAR/M/17; IV/56/SDN/M/17; IV/63/EGY/M/15.

⁵⁶ This issue is discussed further in Chapter 6.

3.3 Qualifications and training of interviewers

The Asylum Procedures Directive stipulates that interviews with unaccompanied children (and decisions on their claims) must be handled by persons having “the necessary knowledge of the special needs of minors”.⁵⁷ It is left to Member States to determine what qualifications the people who conduct asylum interviews should have, including those who interview children. UNHCR recommends that “specially qualified and trained representatives of the refugee determination authority” should conduct the interviews with children, but has not further specified what this means.⁵⁸

The European Asylum Support Office, as part of its European Asylum Curriculum (EAC), has developed a training module entitled ‘Interviewing children’ that goes some way toward filling this gap.⁵⁹ The module is based on the Dialogical Communication Method (DCM) initially developed for use when children testify in court settings.⁶⁰ The DCM seeks to maximize both the quality and quantity of information elicited from children; its multidisciplinary foundation and focus on the child’s perspective make it particularly suited for asylum interviews. The DCM emphasizes the importance of establishing good rapport between the interviewer and the child at the start of the interview (through a warm-up phase) and the benefit of an open questioning style, using appropriate language, avoiding closed and suggestive questions, and encouraging the child’s free narrative.⁶¹

The EAC training module has been welcomed by determining authorities and was used in the four countries of focus in this research, although the module’s availability (to date) only in English was observed to be a limitation.⁶²

The degree of specialization of personnel who interview children differed among the Member States of focus in this research. In Austria, the law requires the Federal Office for Immigration and Asylum to ensure that all its staff members have the necessary qualifications.⁶³ National jurisprudence has highlighted the need for professional skills to assess the reliability and significance of statements made by children and adolescents.⁶⁴ Training programmes on children’s claims are organized, but attendance is not compulsory.

Similarly, in Italy, the law requires that members of the Territorial Commissions receive the necessary training for the correct application of the asylum law,⁶⁵ but there are no provisions in law or administrative instructions with regard to specific competencies and qualifications required to conduct child interviews or to decide on children’s claims.

In the Netherlands, personnel who hear children’s claims must follow training on interviewing vulnerable claimants, including children. Specialist caseworkers interviewed in this research had all followed, as a minimum, the EAC training course. One stakeholder commented that beyond formal courses, reading

⁵⁷ This requirement is in Article 17 (4) (a) and (b) of the original version of the *Asylum Procedures Directive*, and in Article 25 (3) (a) and (b) of the recast version.

⁵⁸ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, 1997, at 8.4.

⁵⁹ EASO Training Module 6.1, Interviewing children.

⁶⁰ This method was developed by Norwegian experts Dr Kari Gamst and Dr Ase Langballe for interviewing children who were potential victims of sexual violence. It is widely used by police and child welfare professionals.

⁶¹ The method as adapted in the EASO training module suggests six phases for interviews: opening and establishing contact with the child, introducing the interview, introduction to a focused theme, a free narrative phase, a probing phase, and a closing phase. An interview may of course contain more than one focused theme.

⁶² SH 79, SH 89.

⁶³ The Act on the Establishment of the Federal Office, Article 2, para. 4: ‘The Director should ensure the qualification of the Federal Office’s employees through their instruction and in-service training.’ No specific provisions address the qualifications of personnel dealing with children’s claims.

⁶⁴ Austria, Asylum Court (AsylGH), C1 425.807-1/2012, 15 May 2013.

⁶⁵ Legislative Decree 25/2008, Article 32. Article 15 of Legislative Decree 25/2008 requires the National Commission to ensure training for members of the Territorial Commissions.

transcripts of interviews and sitting in on interviews conducted by others were particularly useful training methods.⁶⁶

The question of competencies required for handling children's claims has been the subject of court decisions in the Netherlands. The Council of State has found that interviewers and decision-makers in the case of unaccompanied minors receive sufficient training. If in a concrete case there is evidence that this is not the case, the applicant can invoke the requirement of the General Administrative Law Act that the age of the child must be taken into account.⁶⁷

In Sweden, interviews with children are conducted by designated personnel who have received specific training for this purpose. The SMB has five units that handle children's claims, and staff members are specially trained for this purpose.⁶⁸ While there is no rule to stipulate what specific qualifications interviewers should have, all civil servants are required to be acquainted with the goals of their organizations and to enhance and develop their competence.⁶⁹ According to the SMB's manual, an interviewer handling child claims should "*possess long experience in interviewing and examining cases and have participated in the trainings included in the SMB's training programme ... or possess equal knowledge or experience.*"⁷⁰

In 2013, the SMB's Annual Report noted that training in child-specific competence was a prioritized area for newly recruited staff.⁷¹ In addition to the EAC training, the SMB offers a seven-day multidisciplinary training on 'Children in Migration'.⁷² Further, since 2012, there is a project called the 'Daily Learning Organization' (DLO), which introduces a structured approach to quality assurance through quality checks, the introduction of learning programmes for staff, checklists for decisions, and more. The DLO has developed case-based learning modules on child impact analysis that are reported to be heavily utilized.⁷³

Staff of the determining authorities interviewed in the course of this research showed a high level of interest in training programmes focused on children. Several stakeholders pointed out that existing training tends to focus on young children, while most unaccompanied child claimants are adolescents. In particular, they recommended the development of training on adolescent cognitive development, how PTSD affects adolescents, and on defence mechanisms adolescents use to cope with difficult situations.⁷⁴ In other words, stakeholders would welcome more training of a multidisciplinary nature.

⁶⁶ SH 2.

⁶⁷ General Administrative Law Act, Article 3 (2); Council of State, Administrative Law Division, Judgment 201012225/1/V2 of 8 December 2011. In practice, it may be difficult to demonstrate that standards were not observed. See for example, Council of State, Administrative Law Division, Judgment 201303777/1/V1 of 19 February 2014. That decision concerned interviews of children at embassies, in the context of family reunification applications.

⁶⁸ In Boden, Gothenburg, Malmö, Uppsala and Stockholm.

⁶⁹ Government of Sweden, Ordinance of the authorities SFS 2007:515, Section 8, 7 June 2007. When the *Asylum Procedures Directive* was transposed into Swedish law, the need for a provision concerning the qualifications of officials handling child claims was discussed. The government considered that general provisions obliging state authorities to ensure the competence of employees, as well as the requirement that all Swedish Migration Board staff have appropriate '*child competence*' sufficed (Sweden, Government Bill 2009/10:31 – The Implementation of the *Qualification Directive* and the *Asylum Procedures Directive*, at 198)

⁷⁰ SMB, *Manual for Migration Cases*, section 37.2.

⁷¹ SMB, *Annual Report 2013*, p. 17.

⁷² Source e-mail from the SMB of 28 February 2014.

⁷³ Source e-mail from SMB of 28 February 2014.

⁷⁴ SH 18, 19, 21, 22.

4. Establishing the Facts

The *Qualification Directive* lists the elements needed to substantiate an application for international protection.⁷⁵ These consist of the applicant's oral statements and documentation regarding “*the applicant's age, background including that of relevant relatives, identity, nationalit(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.*”⁷⁶

The conditions under which an applicant's statements may be accepted even though they are not supported by documentary evidence are set out in Article 4 (5). In the cases reviewed in this research, it was rare that a child was able to provide documentary evidence to substantiate his or her claim. An undocumented applicant must *inter alia*:

- Make a ‘genuine effort’ to substantiate the application;
- Submit all relevant elements at his or her disposal; and
- Provide a ‘satisfactory explanation’ for any missing elements.

The research showed that, in cases of unaccompanied children, there is no common approach towards deciding what constitutes a ‘genuine effort’ or a ‘satisfactory explanation’.

4.1 Establishing identity, including age

It is well established that an asylum-seeker may be unable to present documentary evidence of his or her claim, including that of age and identity.⁷⁷ The Swedish Migration Board explains that “*in asylum cases it is not unusual that an applicant's identity is unclear. Sweden's commitment to providing protection weighs so heavily that we cannot deny permission to remain solely because a person's identity is not certified by a national passport or other identity document.*”⁷⁸

Identity nevertheless needs to be established, and unaccompanied children were usually informed at their first meeting with the authorities – before the substantive asylum interview – of the importance of

⁷⁵ In Sweden, when implementation of the *Qualification Directive* was being discussed, it was pointed out that such an enumeration is methodologically ‘foreign’ to Swedish law, as the principle of free sifting of evidence prevails and means *inter alia* that there is no limit to what may be used to establish the facts (SOU 2006:6). However, constitutional law requires civil servants to be impartial and fair in the use of their powers.

⁷⁶ *Asylum Procedures Directive* (recast), Article 4 (2).

⁷⁷ UNHCR Handbook, para. 196: ‘*In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.*’

⁷⁸ SMB, Judicial Position on the establishment of identity in asylum cases, RCI 08/2013 (31 May 2013).

cooperating to establish their identity, including their age.⁷⁹ They were regularly asked to present identity documents,⁸⁰ though few could do so.

In some cases, children appeared caught in a ‘Catch 22’ situation. They were invited to present documents, only to have the ones they submitted – in particular the Afghan ‘tazkira’ – dismissed as having little evidentiary value.⁸¹ Similarly, birth certificates were sometimes accepted as proof of identity and sometimes rejected, without explanation and without reference to country-of-origin information on how birth certificates are issued in the country concerned or whether births are even recorded.⁸² In some instances children may not be told that their documents are not accepted, or why, and not given the opportunity to respond.⁸³

Some children seemed bewildered by the focus on documents:

Interviewer: “Which identity documents do you have?”

Child: “I have no identity document.”

Interviewer: “How are you planning to establish your identity?”

Child: “I am talking to you and you should recognize me.”

Interviewer: “What do you show [in your country] when you are identifying yourself to the authorities?”

Child: “In Afghanistan, I go to the authority and present myself and they know me.”⁸⁴

In the absence of documents, oral statements were sometimes but not always sufficient to establish identity: “Your identity could not be confirmed beyond doubt due to the absence of documentation regarding identity.”⁸⁵

Where a child could not establish his or her identity, this was in some instances seen as damaging the child’s general credibility.⁸⁶

In children’s cases, age and identity are inextricably linked. When an applicant claims to be under the age of 18, the authorities consider age an integral part of identity, and an important fact that needs to be established as early as possible in the procedure, in order to know whether to assess the case as a child or an adult. Age determines whether an applicant is entitled to procedural safeguards and reception arrangements for children,⁸⁷ and is a material fact when child-specific forms of persecution are at issue.⁸⁸ Importantly, age may determine the possibility of eventual family reunification.

⁷⁹ In Austria, the Netherlands and Sweden this is done at the initial interview (with the police, Immigration Department and Migration Board respectively). In Italy the child completes an application form (the ‘Model C3’) on which basic biographical data are recorded. Guidance in Sweden speaks of the applicant’s duty ‘to report everything relevant in the case and, as far as possible, to produce evidence that supports their account’ (SMB, Judicial Position concerning the method for examining reliability and credibility, RCI 09/2013, 10 June 2013, p. 6).

⁸⁰ The term ‘identity documents’ refers to birth certifications, identity cards and travel documents. Most of the children who presented identity documents that were accepted as evidence of their identity were from Syria.

⁸¹ Austria’s Asylum Court has referred to the ‘high probability of such documents being forged as well as the widespread practice to certify false merits on official documents’ (AsylGH, C2 420.818-1/2011/7E, 20 October 2011). Similarly, Sweden’s Migration Court of Appeal said that the document was too simple, had little probative value, and that it would not be meaningful to submit it for verification to the Embassy of Afghanistan (Judgment of the MCA of 11 February 2014, Case no. UM 2437-13, MIG 2014:1).

⁸² D/174/PAK/M/16, D/151/EGY/M/16.

⁸³ In connection with an initial age assessment decision, the Irish High Court has set out minimum procedural requirements, including that the applicant be told in simple terms why the interviewer has reservations with regard to identity documents and be given an opportunity to respond (Ireland, High Court, *Moke v Refugee Applications Commissioner* [2005] IEHC 317, 6 October 2005).

⁸⁴ D/133/AFG/M/15.

⁸⁵ D/001/AFG/M/16.

⁸⁶ In D/128/DZA/M/17, the lack of any identity document was explicitly mentioned as undermining the applicant’s general credibility. Also, D/135/RUS/M/17.

⁸⁷ *The Reception Conditions Directive (recast)* contains numerous provisions relating to children. Particular reception arrangements for unaccompanied children are set out in Article 24.

⁸⁸ UNHCR, *Guidelines on Child Asylum Claims*, para. 49.

The authorities' concern was usually that applicants claimed to be younger than they really were, but in some instances the opposite was observed, with children claiming to be adults: "*The smuggler told me that if you say you are a minor, you will be held in a camp. If you are an adult, they just let you go.*"⁸⁹

Disputes about age sometimes overshadowed other parts of the applicant's account, and some number of stakeholders commented that establishing age was the most difficult part of dealing with children's claims.⁹⁰ Although the determining authorities consider the burden of 'proving' age to rest with the child, medical age assessment procedures have become commonplace, as discussed in section 4.4.3 below.⁹¹

4.2 What constitutes a 'satisfactory explanation' for lack of supporting documents?

In most of the cases observed in this research, the children did not submit any identity documents. The Qualification Directive sets out the conditions under which statements not supported by documentary evidence can be accepted.⁹² One of these is the provision of a 'satisfactory explanation' for the absence of documents. The authorities' reaction to the absence of documents differed from one country of focus to another, and sometimes even within the same country, as did what was considered a 'satisfactory explanation' for the absence of documents.

In Austria an applicant may be requested to submit "*all documents that are at his disposal*".⁹³ In Italy, the absence of identity documents neither gave rise to a demand for particular explanations nor jeopardized the assessment of the claim; in none of the cases reviewed was a child considered accountable for the absence of documentation.

This was in contrast to the Netherlands, where asylum-seekers who cannot present documents (and do not have valid reasons for this) must demonstrate 'positive persuasiveness'.⁹⁴ This means that their statements need to be more convincing (in particular more detailed) than those of applicants who do present documents. If there are any inconsistencies, ambiguities, implausible twists or gaps in the applicant's account, then the standard of 'positive persuasiveness' is not met.

It was observed that this higher threshold is also applied to children. The Netherlands Council of State has confirmed that the policy with respect to documents considered essential for the examination of asylum requests applies fully to minor claimants.⁹⁵ Children are thus considered accountable for the lack of documents unless they can demonstrate that they were 'forced' to give up their papers.⁹⁶ From the cases reviewed, it does not appear that 'force' is interpreted as including psychological pressure from a smuggler.⁹⁷

⁸⁹ D/178/AFG/M/16.

⁹⁰ SH 16, SH 17, SH 18, SH 19, SH 22, SH 29.

⁹¹ Separated Children in Europe Programme (SCEP) Thematic Group on Age Assessment, 'Review of Current Laws, Policies and Practices relating to Age Assessment in Sixteen European Countries', May 2011; T. Smith and L. Brownlees, 'Age Assessment Practices: A Literature Review and Annotated Bibliography. A Discussion Paper', UNICEF (2011).

⁹² *Qualification Directive (recast)*, Article 4 (5).

⁹³ Austria, Asylum Act (2005), amended, Article 15 (1).

⁹⁴ The concept of '*positive persuasiveness*' has been developed in operational guidance and case law, in implementation of Article 31 (2) of the Aliens Act 2000.

⁹⁵ Netherlands Council of State, Judgment of 21 December 2011, 201101454/1/V1.

⁹⁶ Netherlands Council of State, Judgment of 14 October 2011, 201103717/1/V1 (2.2.2).

⁹⁷ This contrasts with the more expansive notion of coercion in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which entered into force in 2004. That Protocol in Article 3 (a) acknowledges the abuse of an individual's vulnerability as coercion.

In Sweden, guidance from the Migration Board outlines that it is possible for asylum seekers to establish their identity (and consequently their age) solely with oral statements, – if these statements are “*coherent, clear, detailed, consistent and plausible and the applicant has made a genuine effort to establish his or her identity.*”⁹⁸ However, a recent judgment from the Migration Court of Appeal suggests that oral statements should *complement* written evidence.⁹⁹

In some cases, objective conditions in the child’s country of origin were taken into account when assessing whether a child could reasonably be expected to submit documents. For instance:

*“Citizens of Somalia do not normally have the opportunity to establish their identity, nationality or country of origin with written evidence. In Somalia, there are no authorities that can issue passports or acceptable identity documents. Consequently it is normally not reasonable to require citizens from Somalia to submit written evidence to establish their background.”*¹⁰⁰

Children from other countries, such as Russia and Turkey, were regularly expected to have documents. A 17-year-old Chechen girl who had travelled on her own international passport admitted that she had destroyed the passport after arrival in the EU. She submitted her identity document (domestic passport), a marriage certificate and a paternity certificate to substantiate her application. The determining authority nonetheless wanted to see her travel document.¹⁰¹

Interviewer: “Where is the passport?”

Child: “I destroyed it. I was afraid you would send me back. I did not know you could send me anyway. I was afraid you would send me back at once, that’s why I tore it up.”

The explanation was not accepted as satisfactory; the girl was considered as having ‘deliberately obstructed the investigation’ to determine her identity.

When asked to try to obtain documents from their countries of origin, some children cited risks associated with contacting people still living there. In two cases this was not considered a satisfactory explanation. One concerned a Chechen boy:¹⁰²

Interviewer: “Is there anyone who works in the mosque who can help you in any way to obtain the identity documents or help you to get in touch with your family, or perhaps confirm who you are?”

Child: “The thing is, I’m afraid of contacting anyone at home.”

Interviewer: “But is there any risk if you contact someone you trust?”

Child: “I don’t trust anyone.”

Interviewer: “It will be hard to know what has happened before you left your home country.”

In another case, a child from Uganda who feared persecution due to his sexual orientation was asked if he could obtain his identity card from Uganda. The child was worried about his boyfriend still in Uganda and the guardian stressed that the child’s sexual orientation had become known there. The determining authority nevertheless asked both for identity documents and for contact details of friends and relatives still in Uganda.¹⁰³

⁹⁸ Swedish Migration Board, Judicial Position on establishing identity in asylum cases, RCI 08/2013 (13 May 2013).

⁹⁹ Judgment UM 24 3713, 11 February 2014, MIG 2014:1.

¹⁰⁰ D/120/SOM/M/16, D/125/SOM/F/15, D/132/SOM/M/14.

¹⁰¹ D/122/RUS/F/17.

¹⁰² D/135/RUS/M/17.

¹⁰³ D/134/UGA/M/16.

A Malian child gave a detailed account of his travel across Morocco, his attempts to scale the fence into the Spanish enclave of Melilla and finally, his harrowing journey across the Mediterranean in a small boat, but was reproached in the (negative) decision for not having produced travel documents.¹⁰⁴

The most common reason given by children for their failure to submit travel documents was that they had to give these back to the smuggler. In many cases these did not concern the child's own identity documents, but papers that had been procured for the child by the smuggler. As such they were not of material importance to the claim, but nevertheless impacted heavily on the credibility assessment.

Being in a dependent position *vis-à-vis* the smuggler was accepted in some cases as a satisfactory explanation for why a child could not produce documents, but not in others. A 15-year-old Chinese girl told in detail how she had travelled and that the smuggler had taken her passport. Although the interviewer wondered why a girl who claimed to have been outspoken at school and who was assertive about her religion (the basis for her claim) did not speak up against the smuggler, the child's account was accepted as detailed and consistent and she was granted subsidiary protection. The absence of her passport was not held against her.¹⁰⁵

In other cases the approach was different. For instance:

*"The applicant [a 16-year-old Afghan boy] has stated that he used an Iranian passport that he gave back to the travel agent. He did not try to keep this passport, because he had to listen to the travel agent and did not see the use of the passport. It is considered that he is to blame for this. That he is in a dependent position with respect to the travel agent does not diminish his own responsibility to substantiate, where possible, his travel route."*¹⁰⁶

A 13-year-old Afghan boy was held accountable, despite his young age, for his inability to produce the train tickets used for his journey within the EU. In the assessment of the determining authority, the child should have recognized that he was no longer in danger and ought to have refused to allow the smuggler to retain the tickets:

*"In no way did the applicant try to keep the tickets. Since the applicant was in a safe European country when he gave the tickets to the travel agent, he could have invoked the protection of the authorities, so that this is a circumstance that is at the applicant's risk. The applicant could and should have been expected to invoke the protection of the relevant authorities, and to submit all documents at his disposal."*¹⁰⁷

In summary, the practice of states varied with respect to what constituted a 'satisfactory explanation' for the inability of a child to provide documentary evidence of his or her identity. The individual circumstances of the child were not always considered, even when children explained that they had to return their papers to the smuggler.

National jurisprudence has cautioned that *"to disregard the effect that they [smugglers] may have on their charges would be both unrealistic and unjust."*¹⁰⁸ A common approach is needed to what constitutes a 'satisfactory explanation' in children's cases, recognizing that children may be less likely than adults to have access to corroborating evidence, and taking into account their dependent position, gender and age.

¹⁰⁴ D/176/MLI/M/16.

¹⁰⁵ D/167/CHN/F/15.

¹⁰⁶ D/178/AFG/M/16.

¹⁰⁷ D/173/AFG/M/13.

¹⁰⁸ UK Court of Appeal, *Q and others (R on the application of) v SSHD* (2003) EWCA Civ 364 at 40.

4.3 Age assessment in lieu of documentary evidence

It was observed that when the authorities have doubts about a child's claimed age, they may 'adjust' it, as in the following case:¹⁰⁹

"I have earlier in our conversation indicated that the way you react does not correspond with a person who is under-age. And this, together with your looks which I mentioned, is the reason not to accept that you are under-age. ... Your response is not convincing and also you cannot prove your date of birth through documents. We are now going to give you the date of birth of July 1, 1992, which means we consider you an adult. Have you understood this?"

Children from cultures that do not attach great importance to precise dates were sometimes frustrated by the focus on chronological age:

Interviewer: *"We have been talking for a while now. If I look at you, talk to you, and observe your behaviour, I have doubts if you are really 16 years old. Do you want to respond to this?"*

Child: *"I say I am 16 years old, that is what I heard from my parents. My family members and others consider me a sixteen year-old. What you do for the rest is up to you."*¹¹⁰

The risks of adjusting age based merely on an interviewer's impressions are evident.¹¹¹ In most cases where age is in doubt, the child is invited to undergo a medical age assessment.¹¹² An applicant cannot be forced to do so, but must be informed of the consequences of refusal.¹¹³ Age assessment is not an entirely reliable tool, and UNHCR has stressed that when it is considered necessary, it should involve a comprehensive appraisal of the child's physical and psychological maturity. Where no clear conclusion can be reached, the benefit of the doubt should be given and the individual should be considered a child.¹¹⁴ In other words, any margin of appreciation should be applied in favour of the individual.

There are no EU-wide age assessment statistics, and it not known what proportion of applicants who claim to be under 18 are asked to undergo age assessments. Available information suggests that when there is a large influx of applicants who claim to be unaccompanied minors in a given country, the proportion of cases in which an age assessment is undertaken rises.¹¹⁵

Data on the outcome of age assessments suggest that the number of cases in which the applicant is determined to be an adult is significant. In 36 per cent of nearly 6,000 age assessments done in the Netherlands between 2000 and 2007, the applicant was found to be 18 or older.¹¹⁶ In 2010–2013, the Austrian authorities commissioned medical age assessments in 2,146 cases. In 64 per cent of the cases for which a final result became available, the applicant was found to be 18 years of age or older.¹¹⁷ In Sweden, age assessments

¹⁰⁹ D/170/AFG/M/16.

¹¹⁰ D/170/AFG/M/16.

¹¹¹ Austria's Asylum Court has held that the personal conviction of an official of the determining authority cannot be the basis for an adjustment of age (AsylGH S7 425777-1/2012, 6 April 2012). Swedish authorities explain that they adjust age directly in cases where they consider it evident that the applicant is an adult, or a Eurodac 'hit' reveals that he or she provided documentation in another country. See SMB, press statement, 20 June 2013, 'The Swedish Migration Board presents statistics regarding age assessments in new interim report'.

¹¹² According to Sweden's Migration Court of Appeal, the burden is on the applicant to make his or her stated age 'probable'. There is no obligation on the part of the state to provide a medical age assessment (judgment of the Migration Court of Appeal, 11 February 2014, UM 2437-13, MIG 2014:1).

¹¹³ *Asylum Procedures Directive (recast)*, Article 25 (5) (a).

¹¹⁴ UNHCR, *Guidelines on Child Asylum Claims*, para. 75.

¹¹⁵ This conclusion is drawn from statistics in the Government of the Netherlands, 'Rapport Commissie Leeftijdsonderzoek' (Report of the Commission on Age Assessment), 19 April 2012, Annex 2.

¹¹⁶ Ibid.

¹¹⁷ Information provided by the Federal Office to UNHCR (Austria) on 1 April 2014.

during January–May 2013 resulted in adjustment of the claimed age in 70 per cent of cases.¹¹⁸ Adjustment is almost always upward.

These outcomes help to explain why determining authorities often question the credibility of applicants' statements about their age. At the same time, it must be acknowledged that there is no common procedure for age assessment, nor is there any fully reliable tool. Methods differ from country to country, including physical examinations, dental x-rays, x-rays of the clavicle, hand and wrist, and psychological interviews, and the margin of error is wide. The European Asylum Support Office, tasked with promoting a common approach to age assessment, has stressed that "*there is currently no method which can identify the exact age of an individual.*"¹¹⁹ Nevertheless, as discussed in Chapter 6, a finding that an applicant is older than initially claimed was observed to have a negative effect on the assessment of the 'general credibility' of the applicant.

4.4 Whereabouts of family members

The whereabouts of family members is not one of the 'elements needed to substantiate the application' enumerated in Article 4 (2) of the Qualification Directive, and is not always a material fact, yet questions concerning the whereabouts of family members were asked in the majority of cases audited in this research. Children who were considered evasive or untruthful in their responses risked being seen as failing in their duty to cooperate, and this could have consequences for the credibility assessment.¹²⁰

In preliminary interviews, questions related to family members staying within the Dublin area, since the return of an unaccompanied asylum-seeking child to another Dublin state is permissible only if the child has family members who are legally staying there.¹²¹ At the substantive interview, questions about the whereabouts of family sometimes related to material aspects of the claim, but in most instances these questions were posed in connection with the eventual return of the child to the country of origin. In that connection, the EU Returns Directive provides that "*before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his family, a nominated guardian or adequate reception facilities in the State of return.*"¹²²

Even though return to the country of origin should logically not be considered until after the final rejection of the claim, information about family members is collected during the asylum procedure. The child is often encouraged to participate in family tracing, in line with the *Reception Conditions Directive* provision that tracing should start as soon as possible after the asylum application has been lodged, while protecting the child's best interests and taking care not to jeopardize the safety of the child or family members.¹²³

¹¹⁸ Swedish Migration Board, Press Statement, 20 June 2013, 'The Swedish Migration Board presents statistics regarding age assessments in new interim report'.

¹¹⁹ EASO, *Age Assessment Practice in Europe, Executive Summary*, Malta, December 2013.

¹²⁰ In Austria, for instance, Section 18 para 2 of the *Asylum Act* stipulates that failure to cooperate in family tracing is to be considered in the credibility assessment.

¹²¹ Court of Justice of the European Union, *MA, BT, DA v Secretary of State for the Home Department*, Case C-648/11, Judgment of 6 June 2013. The CJEU was interpreting Article 6 of the 2003 version of the Dublin Regulation; to which Article 8 of the recast version is identical.

¹²² EU Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, *Official Journal of the European Union*, L 348/98, 24 December 2008 (hereafter the *Returns Directive*), Article 10.

¹²³ *Reception Conditions Directive (recast)*, Article 24 (3). The *Qualification Directive (recast)* provides that tracing is to begin 'as soon as possible after the granting of international protection', if it has not already started (Article 31 (5)).



From the child's perspective, both cooperation and lack of cooperation to establish the whereabouts of family members can lead to a negative outcome.¹²⁴ The child may perceive that cooperation with family tracing will facilitate compulsory return, while failure to cooperate may be seen as a deliberate effort to frustrate the examination of his case:

*"The applicant said he could not contact his family in Afghanistan, but the state could consider that the applicant is familiar with Facebook, uses e-mail and has a cell phone, that his family knows he is in [Europe], that his family helped him flee, that the applicant has an aunt who resides in [Europe], and that his two brothers work for ISAF. The state could reasonably argue that the applicant has frustrated the examination."*¹²⁵

Children may have good reasons to be reluctant to provide information on their family members' whereabouts. One official noted: *"It can be that for instance the adolescent was abused by his parents. ... That would be a comprehensible reason for me."*¹²⁶

Children may also fear that tracing could endanger their families, or themselves. One court commented on a child's lack of willingness to disclose her mother's whereabouts, pointing out that her mother (a widow) would not be able to protect the girl on return from the powerful man to whom she had been promised in marriage by her deceased father.¹²⁷

¹²⁴ K. Danielsen and M. L. Seeberg, 'Tracing UMA's Families: A Comparative Study of Some European Countries' Practices and Experiences in Tracing the Parents or Caregivers of Unaccompanied Minor Asylum Seekers', Norwegian Social Research, NOVA Report, no. 19, 2006, p. 40.

¹²⁵ District Court of Amsterdam, 2 May 2003, (AWB 12/35422).

¹²⁶ SH 89.

¹²⁷ Migration Court of Stockholm, Judgment UM 8257-13 of 28 January 2014.

5. Interviewing Asylum-seeking Children

The asylum interview is the principal opportunity for the applicant to set out his or her reasons for seeking protection, and for the determining authority to elicit further evidence or seek clarification. Adapting interview techniques to the individual and contextual circumstances of a child is a further way in which the authorities demonstrate their commitment to sharing the duty to substantiate the claim. National guidance highlights: “an interview with a child, in many ways, can differ from the interview with adults. It is important to remember what is stated in the Preamble of the CRC, namely that the child, ‘by reason of his physical and mental immaturity, needs special safeguards and care’.”¹²⁸

Finding ways to interview children (including adolescents) that encourage a full and truthful account is of interest to a number of disciplines, including child welfare, police work and medicine.¹²⁹ Most studies on this question address the collection of testimony from young children who are victims of abuse, particularly sexual abuse, and much of the available methodological guidance is in that area.

UNHCR considers that “appropriate communication methods need to be selected for the different stages of the procedure, including the asylum interview.”¹³⁰ National jurisprudence similarly stresses the need for ‘an appropriate method of communication’ when hearing a child,¹³¹ yet there is little specific guidance available on how best to elicit information from asylum-seeking children. The EAC Training Module on Interviewing Children has made a significant contribution to filling this gap. Another relevant guide, albeit not designed for asylum interviews, is UNICEF’s handbook on developing effective communication with child victims of abuse and human trafficking, entitled ‘Let’s Talk’.¹³²

In the course of this research, 39 interviews with UASC were observed in the first instance of the asylum procedure in Austria, Italy and Sweden. These interviews showed considerable good practice, often in line with the Dialogical Communication Method encouraged by the EASO Training Module, but this was not uniformly the case. The sections below contain observations on selected aspects of children’s asylum interviews that have the potential to affect the credibility assessment.

¹²⁸ SMB, *Manual for Migration Cases*, section 37.2.

¹²⁹ For an overview, see M. E. Lamb, D. J. LaRooy, L.C. Malloy and C. Katz (eds.) *Children’s Testimony: A Handbook of Psychological Research and Forensic Practice*, 2nd edition, Oxford: John Wiley & Sons Ltd, 2011.

¹³⁰ UNHCR, *Guidelines on Child Asylum Claims*, para. 71.

¹³¹ Austria, Federal Administrative Court BVwG Decision W191 1438370-1 of 2 July 2014. The determining authority ‘did not use an appropriate method of communication for hearing a 15-year-old and did not display the necessary sensitivity for questioning a minor asylum applicant. ... Because the interview technique was not age-appropriate, the interview did not sufficiently clarify the facts. The decision is therefore considered flawed.’

¹³² B. Mitchels, ‘Let’s Talk: Developing Effective Communication with Child Victims of Abuse and Human Trafficking, Practical Handbook for Social Workers, Police and other Professionals’, UNICEF, 2004. UNHCR’s Guidelines for interviewing unaccompanied minors and preparing social histories (1985) contain many helpful strategies, but were also not designed with detailed asylum interviews in mind. Two useful tools specifically designed for use in children’s asylum interviews are: Finland, Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors*, March 2002; USCIS, *Guidelines for Children’s Asylum Claims* (2009).

5.1 Establishing rapport between the interviewer and the child

The asylum interview is a stressful situation, often perceived by the child as a kind of examination. “Children know that their future is linked to this interview. The tension is high and this may affect their will or capacity to say everything they should.”¹³³ As discussed in Chapter 3, establishing trust is essential in order to facilitate disclosure. This is particularly the case for traumatized children, for whom the interview situation may recall the relationship the child experienced with an abuser. Interviewers who encounter difficulty in establishing trust with a child need to be aware of possible reasons for this.

While putting the child at ease is essential, this is hard to achieve in a single encounter:

*“The system requires that the child come for one interview and tells everything to somebody he or she has never seen before. Even in the reception facilities they may take a long time before they open up to us, nothing comes out at the first interview, or what comes out is generally not the real story. Children do not trust us at the beginning, it takes time to build a relationship.”*¹³⁴

An adjudicator agreed that it takes time to build rapport with a child claimant, but noted that “if you manage to break the ice ... they are not so intimidated anymore.”¹³⁵

Many interviewers followed the DCM approach and started with neutral subjects, engaging the child in conversation about school, hobbies, sports and other topics not related to the asylum application. One stakeholder observed that something as simple as greeting the child appropriately can make a difference to the climate – and therefore to the effectiveness – of the interview:

*“Concerning the greeting, most adjudicators don’t shake hands with anyone except maybe the interpreter. He is greeted with a handshake. But if it would be possible to greet the minors, especially the male minors, and to shake their hand and invite them to be seated, that would already be very good.”*¹³⁶

In a similar vein, when speaking of ways of engaging Afghan children, an interpreter drew attention to the importance of addressing the child with respect:

*“One should conduct a conversation with them, in which they are respected, in which they are shown that they are someone and not something useless in society. [Afghan] minors always believe that they are really not worth anything and that they are just the ‘rest’ of the population. ... It is important that they are spoken to respectfully.”*¹³⁷

Some of the interviews observed in this research did not contain a warm-up phase at all. One legal adviser commented that the warm-up phase “hardly takes place. Maybe one question about how they got here or how they are doing in school. ... But that is almost *pro forma*.”¹³⁸

The physical setting also matters to the climate of the interview. When the participants were seated at a round or oval table, this appeared to reduce the psychological distance between them, compared with arrangements whereby the child (sometimes alone or sometimes with a guardian or lawyer) was seated opposite the adjudicator and interpreter. The presence of a computer screen in front of the interviewer was observed to impede direct visual communication between interviewer and applicant, and in many cases

¹³³ SH 50.

¹³⁴ SH 50.

¹³⁵ SH 78.

¹³⁶ SH 82.

¹³⁷ SH82.

¹³⁸ SH 83.

the interviewer's attention appeared to be distracted by the need to type notes directly into the computer.¹³⁹ In some of the interviews observed, a note-taker was present to assist the interviewer, or interviews were recorded (with the child's consent). These good practices made it possible for the interviewer to concentrate his or her full attention on the child.

5.2 Effective communication with the child

Guidance on interviewing asylum-seeking children invariably emphasizes that the interviewer needs to gauge the child's level of cognitive development and communication skills in order to formulate appropriate questions.¹⁴⁰ Although a warm-up phase provides the interviewer with some opportunity to do this, it is not easy, even for a trained interviewer, to make such assessments 'on the spot', cross-culturally and through an interpreter.

Preparation for each interview is essential for developing effective communication with the child. Preparation includes familiarization with the information on the file, as well as with the relevant COI, and consideration of how the child's individual and contextual circumstances may affect the interview. It could also include a preparatory discussion with the interpreter. One official commented on the importance of preparation for the interview:

*"In my view, the adjudicator can already undertake a lot in order to have pre-information. This includes especially to inform oneself on the country of origin regarding the flight grounds of a minor, which can greatly differ from flight grounds of an adult. This includes pre-investigations, possibly examinations or expertise that can be obtained. One can get information on the minor by persons who are acquainted with the minor. One can get hints on trauma from NGOs if that is the case, without violating confidentiality. It can be that one agrees with NGOs that there is pre-information that indicates it would be useful to create a same-sex interview setting or to assign a specially well-trained adjudicator."*¹⁴¹

In some contexts, interviewers are able to benefit from assessments done by personnel working with the child, such as psychologists, medical personnel, social workers or the child's guardian.¹⁴² Not all care workers agree to share information with the determining authorities, with reference to confidentiality obligations.

Consideration of the child's individual and contextual circumstances can help the interviewer to adjust his or her interviewing technique, including tone and complexity of language, as well as his or her expectations concerning the level of detail that the child will be able to provide. For both developmental and cultural reasons, interviewers may need to find suitable, sometimes creative, ways of asking questions or explaining concepts that a child might not otherwise understand. For instance, instead of asking about identity documents, one child was asked if he ever had *"any paper from Somalia with his name and photo on it."*¹⁴³

¹³⁹ A child interviewed by UNHCR in another project was struck by the adjudicator's focus on the computer screen, saying: 'The man did everything. He also looked at the computer the whole time. They probably have too little money, so he has to ask questions and take notes. So, at the same time' (UNHCR Austria, UBAUM, p. 16f).

¹⁴⁰ UNHCR, *Guidelines on Child Asylum Claims*, para. 71: 'Appropriate communication methods need to be selected for the different stages of the procedure, including the asylum interview, and need to take into account the age, gender, cultural background and maturity of the child'; 'Questions should be formulated in such a manner that the child will understand the question and be able to answer' (Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65 (4) of the Immigration Act: Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues, 30 September 1996, no. 3 at B (1) 4); interviewers should use 'a vocabulary that is appropriate to the child's age, level of understanding and to their personal situation' (UK Border Agency, Processing an Asylum Application from a Child, § 13); Questions should be tailored to 'age, stage of language development, background and level of sophistication' (USCIS Asylum Officer Basic Training Course, Guidelines for Children's Asylum Claims, § V (D)).

¹⁴¹ SH 89.

¹⁴² It was observed that the Territorial Commissions in Italy welcomed input from social workers, psychologists and others familiar with the child. In the Netherlands, a medical assessment (by the Medifirst agency) of the applicant takes place before the interview, to provide information on the applicant's capacity (from a psychological/medical viewpoint) to be interviewed.

¹⁴³ D/132/SOM/M/14.

Based on the transcript, in some cases interviewers used language that appeared too technical for the child, and seemed to make assumptions about the child's understanding of the asylum process. For instance: "Are you psychologically and physically able to take part in the interview in your asylum procedure to ascertain the essential grounds?"¹⁴⁴ "Were you persecuted due to your membership in a particular social group?"¹⁴⁵

A more child-appropriate way of asking about asylum grounds was formulated as follows: "So, now I would like you to tell me about why you apply for asylum here. ... I know that you are young but if you know, tell me all the details. ... First you will tell me and then if I have questions, I will ask them."¹⁴⁶

As noted in Chapter 3, children, including adolescents, are particularly susceptible to suggestive questioning, and may give the response that they think the interviewer wants to hear. Many interviewers were careful to encourage the child's memory through open questions such as:

*"I have never been in your country. Can you describe your hometown for me?"*¹⁴⁷

*"Just tell me a little bit about your life in Tehran. Where did you live? Did you go to school? How was your daily life?"*¹⁴⁸

*"And what happened when the soldiers arrested you?"*¹⁴⁹

*"I do not know your family, so would you like to tell me a bit better why one day you said: 'I will leave even if I have a long way in front of me?'"*¹⁵⁰

*"What kind of relationship did you have with your father?"*¹⁵¹

Suggestive questions were nevertheless observed, as in the following examples:

*"Was it a club that they beat you with?"*¹⁵²

*"I can imagine that if a child disappears, that is spoken about in the family. So, was that never a topic?"*¹⁵³

Interviewers need to be aware not only of the risk of children of being influenced by suggestive questioning, but that the risk is heightened when the memories involved are old, the questions confusing and the person being questioned feels intimidated¹⁵⁴ – all conditions likely to be present in a child's asylum interview.

Children were also frequently asked to explain why something happened. A six-year-old girl from Somalia was asked *why* she was beaten by members of Al Shabaab.¹⁵⁵ A boy from Afghanistan was asked "*why* would your uncle want to sacrifice his family by writing such a letter?"¹⁵⁶ Questions like these make assumptions

¹⁴⁴ D/025/DZA/M/15.

¹⁴⁵ IV/06/SYR/M/17.

¹⁴⁶ D/140/SYR/F/12.

¹⁴⁷ IV/102/DZA/M/17, IV/106/AFG/M/14.

¹⁴⁸ IV/10/AFG/M/15.

¹⁴⁹ IV/60/ERI/M/15.

¹⁵⁰ IV/60/ERI/M/15.

¹⁵¹ IV/61/GMB/M/17.

¹⁵² IV/06/SYR/M/17.

¹⁵³ IV/01/AFG/M/16.

¹⁵⁴ G. Richardson, G. H. Gudjonsson and T. P. Kelly, 'Interrogative Suggestibility in an Adolescent Forensic Population', *Journal of Adolescence*, vol.18, 1995, pp. 211–16; A.-C. Cederborg, Y. Orbach, K. Sternberg and M. E. Lamb, 'Investigative Interviews of Child Witnesses in Sweden', *Child Abuse and Neglect*, vol. 24, no. 10, October 2000, pp. 1355–61.

¹⁵⁵ D/141/SOM/F/6.

¹⁵⁶ D/123/AFG/M/16.

about children's ability to understand the causal relationship between events that, as noted in Chapter 3, may not be realistic.¹⁵⁷

One adjudicator explained that he would pose questions more simply if he were interviewing a young child. But he felt this was not necessary with 16–17 year-old applicants.¹⁵⁸ A judge disagreed, stating that “a more individualized response to the adolescent would be better than the same questioning as for adults.”¹⁵⁹ Furthermore, asking questions in an unbiased and non-judgemental way can be especially important in interviews with adolescents, as they may be particularly sensitive to how others see them.¹⁶⁰

5.3 Questioning children about traumatic experiences

Research has shown that asylum-seeking and refugee children are much more likely than their non-refugee peers to have had traumatic experiences. It is important to be aware of the extent to which trauma can influence both the storage and retrieval of memory,¹⁶¹ as it is rare that a child will articulate such difficulties directly, as was done by one 15-year-old Afghan boy: “I don’t feel so good. At night I don’t sleep well. The brain does not work. I have nightmares all the time. I have seen many wars.”¹⁶²

Like social workers and forensic interviewers working in child protective services, asylum interviewers need to develop techniques that enhance a child’s ability to recall and to speak about past experiences, and reduce the potential for false information.

A number of good practices were observed. Many interviewers demonstrated empathy by acknowledging the child’s pain and difficult situation. For instance:

Interviewer: “Is there anything that you consider important that [the determining authority] must know and that has not been said today?”

Child: “There is one incident I can’t get off my mind. It happened when I was in [X]. I have a cousin ...”

Interviewer: “I understand that this occupies your thoughts.”¹⁶³

In another case, the child’s emotion was acknowledged as follows:

*“I understand this is difficult. It is OK if you cry. Take your time and it’s no problem if you tell us you want a break.”*¹⁶⁴

Good practice was observed when the interviewer used open questions to encourage the child to speak about what he or she was *able* to remember about traumatic events, and then proceeded at the child’s pace, without interrupting the child’s narrative flow: “Now we are going to talk about the incident when your brother was hurt. This is really important. I want you to tell me as thoroughly and with as much detail as you can about what happened that day.”¹⁶⁵

¹⁵⁷ Finland: Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors*, March 2002, p. 12.

¹⁵⁸ SH 79.

¹⁵⁹ SH 87.

¹⁶⁰ ‘Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims’, in *Understanding Adolescents! A Juvenile Court Training Curriculum*, American Bar Association Juvenile Justice Center, edited by L. M. Rosado (June 2000).

¹⁶¹ EASO Training Module 6, Interview Techniques, Unit 6.2 (Memory).

¹⁶² D/130/AFG/M/15

¹⁶³ D/138/SYR/M/17.

¹⁶⁴ D/172/IRQ/F/17.

¹⁶⁵ D/132/SOM/M/14.

Specific questions were asked only after the child had come to a natural stop.

In some instances, interviewers faced the challenge of balancing their task of gathering the facts of a case with the need to ‘do no harm’ to the child. In the case of a girl who had been detained in Sudan and Libya, the interviewer did not pursue questions about sexual violence during her detention.¹⁶⁶

In another case, a boy started to relate traumatic experiences, only to have the interviewer quickly change the subject, as in the following exchange:

Child: *“I will never forget. I was almost dead when we fell into the water.”*

Interviewer: *“How long were you in Greece?”*¹⁶⁷

It was not clear whether this was a conscious effort on the part of the interviewer to avoid retraumatizing the child, or because the interviewer considered these details of no relevance to the claim. The child was on the verge of relating what, to him, may have been the most significant part of his experience. Stopping him from talking about it could undermine trust between the child and the interviewer, and discourage the child from being forthcoming in the rest of the interview.

These are very difficult situations calling for patience, empathy and professionalism. Specialized training on interviewing victims of trauma, including active listening techniques, would be beneficial, given the prevalence of post-traumatic stress disorder among unaccompanied asylum-seeking children.

5.4 Knowledge tests

In the absence of documentary evidence, the determining authorities often seek to ascertain a child’s nationality, place of origin, ethnicity or religion by ‘testing’ their knowledge of certain facts. In the cases reviewed in this research there were several instances where this was done in a manner that appeared well adapted to the child’s individual and contextual circumstances. In one case, for instance, questions about sports were used to confirm a boy’s country of origin and ethnic origin:¹⁶⁸

Interviewer: *“Did you watch sports in Syria, as you did in the waiting room ...?”*

Child: *“Yes, in Syria I watched sports on the Al-Jazeera Sport Channel.” ...*

Interviewer: *“Can you tell me some Syrian teams?”*

Child: *“There are 14. We call it the Premier League.”*

Interviewer: *“Can you tell me the most famous teams?”*

Child: *“Al Itad; Al Karama; Al Wakada; Jabla; Afrain; Nawair.”*

Interviewer: *“Who is a well-known player?”*

Child: *“The goalie Misib Balhous; the best three players: Jihad Husayn; Atif Dginyat; Firas Al Kathib. All four are players of the Syrian team.” ...*

Interviewer: *“Can you tell me a Kurdish player in Syria?”*

Child: *“There is someone called Jihan. I don’t know his last name. He is a defender. Kazzafi Uzmah is a good Kurdish player. He plays for Jihad. It is the team of the Al-Hassaka province.”*

¹⁶⁶ IV/58/ERI/F/17.

¹⁶⁷ D/127/AFG/M/16.

¹⁶⁸ D/175/SYR/M/17.

In other cases, however, the questions appeared less reasonable. For instance, a child who was just 11 years old when he left Afghanistan was asked:¹⁶⁹

Interviewer: *“Was there a ‘holy place’ in your area?”*

Child: *“Not that I can remember, there was only a mosque ...”*

Interviewer: *“Where was the bank?”*

Child: *“There was no bank. I have not seen any bank.”*

Interviewer: *“If I came to your village, what would you show me?”*

Child: *“Nothing. It has been four-and-a-half years since I was there.”*

A girl who was just 13 at the time of interview and who had left her country years earlier was asked:¹⁷⁰

Interviewer: *“What was the currency in Somalia?”*

Child: *“I have forgotten. I only remember Ethiopian and Sudanese.”*

Interviewer: *“But don’t you remember what currency you had when you were there?”*

Child: *“I have never held any currency in my hand. I was little.”*

Expectations also seemed excessive in the case of a boy from Mali whose claim was based on a threat of forced recruitment. He was asked detailed questions aimed at his ability to distinguish between the objectives of the Tuareg rebels and those of other rebel groups. Questions about the geography of Mali also seemed too detailed in this case, taking into consideration his individual circumstances (illiterate, originating from a poor family of farmers, never having moved within Mali before departure).¹⁷¹

In three of the four countries of focus, to determine the child’s place of former residence, the determining authority relied on a knowledge test (questions on geography, politics and/or clans), sometimes combined with expert language analysis.¹⁷² The use of language analysis as a means of checking the credibility of an asylum-seeker’s claim to come from a particular country of origin is widespread, although experts have warned that it is not always reliable.¹⁷³ This may particularly pertain to children who have lived for significant periods as refugees outside their own countries, such as Somali children in Kenya or Afghan children in Iran or Pakistan.

¹⁶⁹ D/137/AFG/M/15.

¹⁷⁰ IV/111/SOM/F/13.

¹⁷¹ IV/54/MLI/M/17.

¹⁷² D/83/RUS/M/17, IV/111/SOM/F/13, D/118/AFG/M/16, D/120/SOM/M/16, D/135/RUS/M/16. In some cases this involved a linguist meeting with the child in person; in others it involved the analysis of a recording by a designated expert.

¹⁷³ The complexities of using language analysis to determine origin are discussed in K. Zwaan, M. Verrips and P. Muysken (eds.), *Language and Origin: The Role of Language in European Asylum Procedures: Linguistic and Legal Perspectives*, Nijmegen: Wolf Legal Publishers, 2010. In 2014, the UK Supreme Court examined a number of issues connected with using a private company to provide expert language analysis. See *Secretary of State for the Home Department v MN and KY (Scotland)* [2014], UKSC 30 (6 March 2014).

5.5 Keeping the focus on material facts

The EASO training module on evidence assessment explains that “*material facts go to the core of the claim and are of direct relevance for the determination of one or several of the requisites of the relevant definition.*”¹⁷⁴ The asylum interview should focus on the core of the applicant’s account, and not be distracted by peripheral details.¹⁷⁵

In all interviews observed in the course of this research, children were invited to explain their asylum grounds, and follow-up questions were asked that concentrated on the central part of the claim. However, there were also numerous instances in which questioning focused on matters that did not seem directly relevant.¹⁷⁶

This was notably the case with respect to questions about the child’s travel route. In *Beyond Proof*, UNHCR pointed out that the travel route itself is rarely a material fact, yet the applicants’ statements and other evidence regarding the travel route in some cases had a significant bearing on the way credibility was assessed.¹⁷⁷ Children are already questioned about their flight route at their initial interview with the authorities. When this is raised again at the substantive interview, they may perceive the repeated questioning as a lack of trust on the part of the determining authority. This can undermine a child’s willingness or ability to be forthcoming in responses on other issues.

The degree to which children were questioned in the substantive interview about their flight route varied. In one country of focus the determining authorities devoted little attention to the travel route, and the cases audited there provided no indication that the child’s travel route or responses to questions about the route had any effect on the credibility assessment.¹⁷⁸ In the three other countries, however, children’s oral testimony about their flight route, together with the absence of documentation of that route, such as bus or train tickets, did affect the credibility assessment, as discussed in Chapter 6.

Several stakeholders commented that starting an interview with questions about the flight route might lead a child to believe that what happened during the journey is relevant to the evaluation of his claim. A child would be unlikely to make legalistic distinctions between abuses faced in the country of origin and those faced *en route*. Having told in detail about the journey, the child might think that he or she has satisfied what the authority needs to know in order to make a decision.¹⁷⁹

One stakeholder pointed out that it might be easier for a child to recall and share what happened on the journey. What happened before departure, although more relevant to the application for asylum, belongs to the private sphere, and talking about that might be more difficult for a child. The stakeholder urged interviewers not to ‘get carried away’ by the child’s account of the journey, and to keep the focus on the material issues.¹⁸⁰

¹⁷⁴ EASO, Training Module 7, Evidence Assessment, section 2.1.7.

¹⁷⁵ SMB, *Manual for Migration Cases*, under heading entitled ‘Oral Case Management’.

¹⁷⁶ For instance, a child was questioned about his situation in the event of being sent back to Greece, even though this was not relevant to his claim, as no returns to Greece were being carried out (D/127/AFG/M/16). A boy who had lived as a street child in Morocco was questioned at length about the death of an aunt with whom he had briefly stayed (IV/112/MAR/M/16).

¹⁷⁷ UNHCR, *Beyond Proof*, p. 89.

¹⁷⁸ In IV/51/AFG/M/17 the child was explicitly reassured that it was not important to remember all locations he had passed through.

¹⁷⁹ SH 61, SH 78.

¹⁸⁰ SH 78.

6. *Ex Officio* Investigation

The Court of Justice of the European Union has made clear that Member States' determining authorities are to help to assemble 'all elements needed' to substantiate an asylum application.¹⁸¹ The research looked at how this is understood in children's cases, also in view of UNHCR's position that the examiner may need to play a greater role in cases of unaccompanied children. A national judge agreed: "*No matter if the minors are 17 years 10 months old, it lies on my side ... I interpret the principle to investigate ex officio strictly as the responsibility of the decision-maker.*"¹⁸²

The duty of the authorities to investigate *ex officio* is recognized in the four countries of focus. In Sweden, the duty to ensure that a matter is investigated to the extent its nature requires is a well-established principle of administrative law.¹⁸³ Sweden's Migration Court of Appeal has confirmed that the duty to substantiate an application is shared between the applicant and the determining authorities, pointing out that because of the protection interests at stake, the authorities have to be active in investigating issues that are central to the case.¹⁸⁴

According to Article 18 para 1 of the Austrian Asylum Act, the Federal Office and the Federal Administrative Court shall endeavour *ex officio* at all stages of the procedure to ensure that information relevant for a decision is adduced. The investigation should not be limited to certain facts or exclude facts. The principle of 'material truth' (*Grundsatz der materiellen Wahrheit*) forbids the authority to investigate only in one direction.¹⁸⁵

In the Netherlands, general administrative law requires the authority to gather the necessary information concerning the relevant facts and the interests to be weighed in order to make a decision.¹⁸⁶ Administrative guidance provides that the determining authority may gather evidence in the form of language analysis, age assessment or DNA tests to verify family ties, but this is not obligatory.¹⁸⁷

In Italy, a number of legal provisions introduce the concept that, in asylum matters, the duty to substantiate the application is shared between the applicant and the decision-maker, in contrast to the general principle of the burden of proof set out in the Civil Code. Legislative Decree 251/2007 states that "*the examination is made in cooperation with the applicant*" and refers to documentation collected by the decision-maker, as well as that submitted by the asylum-seeker.¹⁸⁸ Legislative Decree 25/2008 elaborates on the authority's obligation to collect and use country-of-origin information.¹⁸⁹ The Italian Supreme Court has referred to

¹⁸¹ *M.M. v Minister for Justice, Equality and Law Reform*, Ireland, Attorney General, C-277/11, CJEU, 22 November 2012, para. 65.

¹⁸² SH 87.

¹⁸³ As far as the administrative courts are concerned, the principle is explicitly outlined in the Administrative Court Procedure Act, section 8. It is considered to apply by analogy to the SMB and other state authorities. The SMB has an even more far-reaching obligation under section 4 of the Administrative Procedure Act, which obliges each authority to provide information, guidance, advice and such other assistance to individuals in matters falling under its authority, to the extent appropriate in relation to the matter at hand, the nature of the individual's need for assistance and the function of the authority.

¹⁸⁴ Swedish Migration Court of Appeal, Judgment UM 5928-11 of 25 April 2012, MIG 2012:18. The court stated in its first decision: "*in some cases the investigator may have to use all means at hand to produce adequate evidence for the applicant*" (Judgment UM 122-06 of 18 September 2006, MIG 2006:1).

¹⁸⁵ S. Schumacher et al., *Fremdenrecht*, Vienna: ÖGB Verlag, 2012, p. 412.

¹⁸⁶ General Administrative Law, Article 3:2.

¹⁸⁷ IND Working Instruction 2010/14, para. 4.1.

¹⁸⁸ Legislative Decree 251/2007, Article 3 (1) and 3 (3).

¹⁸⁹ Legislative Decree 25/2008, Article 8 (3). In Judgment 17576 of 27 July 2010 the Supreme Court of Italy (Corte di Cassazione, Sezioni Unite Civile) elaborates on the duty of the judge to gather country of origin information.



the Qualification and Asylum Procedures Directives as bringing a ‘true reversal’ in the general principle of burden of proof applicable to civil matters, since they contain the principle that the judge has a role that is “*unanchored from the principle of the ordinary civil adjudication*” in acquiring information and documentation to verify the existence of conditions for international protection.¹⁹⁰

The research observed different kinds of investigation undertaken by the authorities in children’s cases: these consisted of verifying the authenticity of documents, age assessment, language tests and onsite investigations in the country of origin (including tracing and interviewing family members) and, most frequently, research into conditions in the country of origin.

The determining authorities of all four countries of focus have information units responsible for the elaboration, compilation and dissemination to decision-makers of country-of-origin information. In three of the four countries, decision-makers can put case-specific information requests to these specialized units. EU law requires Member States to ensure that decision-makers have access to “*precise and up-to-date information ... as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited.*”¹⁹¹

Information on the ‘general situation’ may be insufficient in children’s cases, and UNHCR has underlined the need for more child-specific information:

“Just as country-of-origin information may be gender-biased to the extent that it is more likely to reflect male as opposed to female experiences, the experiences of children may also be ignored. In addition, children may have only limited knowledge of conditions in the country of origin or may be unable to

¹⁹⁰ Supreme Court of Italy (Corte di Cassazione, Sezioni Unite Civile), Judgment 27310 of 17 November 2008.

¹⁹¹ Asylum Procedures Directive (recast), Article 10 (3) (b).

*explain the reasons for their persecution. For these reasons, asylum authorities need to make special efforts to gather relevant country-of-origin information and other supporting evidence.”*¹⁹²

Stakeholders noted an improvement in availability of child-specific information for ‘larger’ countries of origin of child claimants such as Afghanistan,¹⁹³ but information on children in other countries was not always available,¹⁹⁴ or was presented under headings such as ‘women and other vulnerable groups’ without detailed investigation of child-specific risks.¹⁹⁵

The need for child-specific information was explained by one decision-maker in the following terms: *“There are lower expectations with regard to the evidence that a child will bring ... and too detailed accounts are not necessary if we have objective information that can complement what the child has reported.”*¹⁹⁶

The authorities did not always actively investigate a child’s statement, even when this might have helped to confirm the stated facts. For instance, in a case concerning a boy from Chechnya who had claimed an imputed political opinion due to his brother’s affiliation with rebels, the interviewer expected the child to present evidence of the killing of his father and brother.¹⁹⁷

Interviewer: *“It would be very helpful if you try to gather written evidence that supports your account as it will give a greater weight to what you have told us about.”*

Child: *“I don’t think there is such a possibility as incidents as these are not reported in the media. You are not allowed to do so and to talk about it. That is the order from the president.”*

Interviewer: *“From what I know, this is shown on TV [when the authorities have taken rebels] on purpose to scare other rebels from similar things. Have you heard anything in your country when you watched TV or seen any news when rebels are arrested?”*

Child: *“Of course I have watched TV, but I have never seen anything like that.”*

It was not clear why, if the authority believed that this evidence existed, it did not seek to collect it directly.

In three cases in the sample, the authorities undertook onsite investigations in the country of origin (twice in Afghanistan and once in Pakistan). It was considered that the children’s statements were insufficient to refute the results of these investigations.¹⁹⁸ No cases were found in the research sample in which the authorities sought an expert opinion on the child’s mental health or cognitive ability, although such opinions were sometimes submitted by the child’s counsel or the guardian.

¹⁹² UNHCR, *Guidelines on Child Asylum Claims*, para. 72. The head of the COI Unit of one of the countries of focus outlined five child-specific topics that should be taken into account when child-specific COI is prepared: (i) the legal framework pertaining to children, including *inter alia* the age of criminal responsibility, of marriage, working age; (ii) the prevalence of harmful traditional practices (in particular FGM) and of violence against children, including domestic violence; (iii) access to education; (iv) the impact on children of the socio-economic situation, including information about child labour; and (v) children in care and in need of care, and the availability of and conditions in care institutions.

¹⁹³ SH 17, SH 18.

¹⁹⁴ SH 16, 17, 52, SH 57, SH 61, SH 65, SH 71. One decision-maker expressed a minority viewpoint, stating: *‘I don’t need different COI for minors. ... The general political situation and the basic care is the same for everyone’* (SH 88).

¹⁹⁵ Austrian Red Cross/ACCORD, ‘Researching Country of Origin Information, Training Manual, 2013 Edition, p. 28; R. Kohli, F. Mitchell, H. Connolly, ‘An Analysis of the Coverage of Issues Related to Children in Country of Origin Reports Produced by the Home Office. Report for the Independent Advisory Group on Country Information (IAGCI)’, October 2012.

¹⁹⁶ SH 52.

¹⁹⁷ D/135/RUS/M/17.

¹⁹⁸ D/10/PAK/M/16, D/11/AFG/M/16, D/26/AFG/F/17.

7. Conclusion

The duty to gather information that is material to the claim is shared between the asylum-seeker and the determining authority and, as discussed, rests more heavily on the determining authority in cases involving child applicants and in cases involving adults. The authority should provide guidance and information to the child to enable him or her to participate in the procedure in a meaningful way. The information about the asylum procedure needs to be both substantive and accessible. Providing information in a pro forma way or using information designed for adults may not ensure a child's full understanding of the process.

The determining authority should question the child in a manner that is appropriate to the child's maturity and level of cognitive development, and other individual and contextual circumstances, as these will inform the complexity of the interviewer's language and questions, and the interviewer's understanding of the child's responses. Wider use of expert opinions from child psychologists and other professionals could help the determining authority assess the child's mental health and cognitive ability. Guardians and others who know the child may, without violating confidentiality, also be able to provide useful information about the child that can contribute to an effective asylum procedure and a correct assessment of credibility.

The decision-maker needs to assess when a child can reasonably be expected to submit documentary evidence. In deciding whether an explanation for the lack of such evidence can be accepted as satisfactory, the decision-maker should take into account not only the child's age and gender, but also the multiple pressures exerted on unaccompanied asylum-seeking children, including possible exposure to additional protection risks.

The determining authority should make every effort to gather evidence bearing on the application – including evidence in support of the claim.

CHAPTER 5

Interpreter-mediated Interviews with Children

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1. The Influential Role of the Interpreter

In asylum interviews the entire exchange almost always takes place through an interpreter. Only rarely do an interviewer and an applicant share a common language, enabling them to communicate directly. As a result, “*interpreters have been unanimously recognized as indispensable actors in asylum hearings.*”¹ They are also *influential* actors, because the interpreter determines what messages the applicant and the interviewer receive.²

UNHCR’s 2010 study on the application of the EU Asylum Procedures Directive noted that the quality of interpretation has a “*significant bearing on the effectiveness of the personal interview and the reliability of the oral evidence gathered.*”³ The importance of high quality interpretation at asylum proceedings is at the core of a project launched by the Swedish Migration Board called ‘Interpret me right’.⁴

The fundamental right of the child to be heard is set out in Article 12 of the Convention on the Rights of the Child. In asylum cases, the realization of this right depends not only on the efforts made by the interviewer, but to a great extent also on the interpreter. The child’s expression will inevitably be changed to some degree through the interpretation. This is not simply because undetected errors in translation can have severe consequences, but because, as the philosopher Mikhail Bakhtin wrote, “*each word tastes of the context and contexts in which it has lived its socially charged life.*”⁵ The interpreter’s ability to establish trust with the child and to communicate that context to the decision-maker are vital.

The interpreter’s role in gathering the facts and – indirectly – in the credibility assessment should not be underestimated. It is important that those charged with credibility assessment constantly keep in mind the fact that interpreted evidence is not original evidence; the interpreter plays a part in ‘constructing’ the applicant’s testimony, and in communicating its tone and emotion.⁶ Although experts in legal interpreting stress that the extent to which proceedings are affected by interpretation will vary,⁷ “*the question is not whether the presence of an interpreter changes the interview, but how.*”⁸ The EASO agrees that “*the presence of a third person also – always – influences the interview in a positive or negative manner.*”⁹

¹ O. Keselman, ‘Restricting Participation: Unaccompanied Children in Interpreter-mediated Asylum Hearings in Sweden’, *Linköping Studies in Arts and Science*, no. 501, p. 12.

² O. Keselman, A.-C. Cederborg, M. E. Lamb and O. Dahlstrom, ‘Mediated Communication with Minors in Asylum Seeking Hearings’, *Journal of Refugee Studies*, vol. 21, no. 1, 2008, pp. 103–16 at p. 112.

³ UNHCR, ‘Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, Part 2’, March 2010, online only, at p. 115. Training materials for asylum officers prepared by the US authorities point out that ‘*interpreters play a critical role in ensuring clear communication between the child and the asylum officer*’ and ‘*the actions of an interpreter can affect the interview as much as those of an asylum officer.*’ US Citizenship and Immigration Services (CIS), Asylum Officer Basic Training Course, rev. March 21, 2009, *Guidelines for Children’s Asylum Claims*, Part V (C)2.

⁴ ‘Projekt Tolka mig rätt’. Information on this project is available on the website of the Swedish Migration Board.

⁵ M. Bakhtin, *The Dialogic Imagination: Four Essays*, edited by M. Holquist and translated by C. Emerson and M. Holquist, Austin: University of Texas Press, 1981, p. 293.

⁶ I. Gómez Dièz, ‘The Role of the Interpreter in Constructing Asylum Seekers’ Credibility: A Hearing at the Spanish Asylum and Refugee Office’, *Sociolinguistic Studies*, vol. 4, no. 2, 2010, pp. 333–70.

⁷ R. Morris and J. Colin, *Interpreters and the Legal Process*, Winchester: Waterside Press, 1996, p. 23.

⁸ C. Valero-Garcés and A. Martin (eds.), *Crossing Borders in Community Interpreting: Definitions and Dilemmas*, Amsterdam: John Benjamin’s Publishing, 2008, p. 2. An expert in court interpreting, Dr Ruth Morris, points out that ‘*the effectiveness of communication, even between individuals who share the same language, can be affected by differences such as age, nationality, cultural background, group membership and professional status*’ (R. Morris and J. Colin, *Interpreters and the Legal Process*, p. 16).

⁹ EASO, Training module 6.1 *Interview Techniques*, Unit 3.2 Working with an interpreter.



The interpreter obviously influences the written transcript of the asylum interview through his or her choice of words or omissions. This has particularly important implications when the first-instance decision-maker is not present at the interview, and at appeal, if the applicant is not heard again in person. In short, the work of interpreter affects the credibility assessment and beyond that, the outcome of the proceedings.¹⁰

¹⁰ For one of the first studies of this subject, based on asylum interviews in Switzerland, see W. Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, Special Issue: Refugees: Issues and Directions, vol. 20, no. 2, 1986, pp. 230–41. For an overview of later research into the role of the interpreter in asylum proceedings, see the relevant section of the Reading List annexed to this Report.

2. What is Expected of the Interpreter?

The Asylum Procedures Directive (in both the original and recast versions) requires Member States to provide an interpreter “*able to ensure appropriate communication between the applicant and the person who conducts the interview*”.¹¹ According to the recast directive, the interview shall take place in the language ‘preferred’ by the applicant, unless there is in another language that the applicant “*understands and in which he or she is able to communicate clearly*”¹² – although this may be to the applicant’s disadvantage. The directive does not further specify what is expected of the interpreter.

EASO’s training material on Working with an Interpreter specifies that the interpreter must:

- Be neutral, independent and impartial;
- Translate accurately, verbatim, without adding or editing information;
- Bring any difficulties or conflicts of interest immediately to the attention of the adjudicator; and
- Ensure strict confidentiality of everything said in an interview.¹³

Internal instructions in Austria on working with interpreters stress three key requirements of the interpreter – confidentiality, impartiality, and accuracy and completeness.¹⁴ The ‘Code of Conduct for Interpreters’ issued by the Netherlands’ Immigration and Naturalization Service provides considerably more detail.¹⁵ Under the head ‘Integrity’ it requires of the interpreter a non-discriminatory attitude, sensitivity, absence of verbal or physical intimidation and of contact with the applicant outside the interview. Under the heading ‘Performance’ it requires strict neutrality and translation into direct speech of everything that is said. The interpreter should inform the interviewer and applicant when an exact translation is not possible and alert the interviewer to any possible misunderstandings.

National requirements with respect to the professional qualifications of interpreters used in the first instance of the asylum procedure vary, and certification of interpreters is done at the national level. In the Netherlands, the law calls for the use of certified interpreters, with some permissible exceptions for urgent cases or where no certified interpreter can be found for the particular language.¹⁶ In Sweden, priority is given to court-accredited interpreters, if available within a reasonable time and distance.¹⁷ Similarly, policy in Austria gives first priority to court-accredited interpreters and second priority to other trained interpreters. Only if these are not available within a reasonable time and distance, should untrained interpreters be used.¹⁸ In Italy, the asylum authority contracts an external service provider (following a public tender) to supply interpreters, who are not necessarily court-accredited or professionally trained, but who must be able to ‘communicate adequately’.¹⁹

¹¹ *Asylum Procedures Directive (recast)*, Article 15 (3) (c). The corresponding passage in the original version of the Directive is Article 13 (3) (b).

¹² *Asylum Procedures Directive (recast)*, Article 15 (3) (c). The recast improves on the corresponding passage in the original version of the Directive, Article 13 (3) (b), which permits the interview to take place in a language other than that preferred by the applicant if there is another language that the applicant ‘*may reasonably be supposed to understand and in which he/she is able to communicate.*’

¹³ EASO Training Module 6, Interview Techniques, Unit 3.2, Working with an interpreter.

¹⁴ Austria, (former) Federal Asylum Office, Binding Instruction on Interpreters (*Verbindliche Arbeitsanleitung Dolmetscher*), Version 2 of 17 July 2008, pp. 7–10. At the time of the research, the new Federal Office for Immigration and Asylum was working on a similar instruction.

¹⁵ Netherlands Ministry of Security and Justice, Immigration and Naturalization Service, Interpreters’ Code of Conduct (*Gedragscode tolken*), March 2014, Publication number 1106. New guidance on working with an interpreter was issued by the IND on 23 May 2014: IND Work Instruction 2014/5 (SDIS), Working (together) with an interpreter.

¹⁶ Netherlands, Law on certification of interpreters and translators (*Wet beëdigde tolken en vertalers (Wbtv)*, Article 28.

¹⁷ SMB, Instruction on the use of interpreters, GD 82/2008 (10 November 2008).

¹⁸ Austria, (former) Federal Asylum Office, Quality Criteria for Interpreters (*Qualitätskriterien Dolmetscher*), 2 July 2008, p. 1. At the time of the research, the new Federal Office for Immigration and Asylum was working on similar Quality Criteria.

¹⁹ Republic of Italy, *Legislative Decree 25/2008*, Article 15.

3. The Particular Challenge of Interpreting for Children

Few studies have focused on interpreting for children; most of those that do are about interpreting in medical settings or when young witnesses are involved in court proceedings, often involving child sexual abuse.²⁰ Interpreting for asylum-seeking children has received comparatively little attention, with the exception of research conducted in Sweden.²¹ That work draws attention to the fact that the asymmetry between applicant and adjudicator inherent in asylum proceedings is aggravated in children's cases, where age differences between the participants can affect how child applicants are treated as well as the "respect and importance attributed to their voices."²²

Austria's Handbook for Interpreters advises:

*"Young people or children often find administrative procedures overwhelming. Minor asylum applicants are even less familiar with [Austrian] procedural standards/ interview situations than adults. Children's verbal expression and the way they convey their positions can be different from that of adults. Traumatic experiences can have an effect on the communication skills of children and youth, and young people are less able than adults to develop strategies to cope with past trauma. These are important factors which interpreters should be aware of, when they interpret for minors."*²³

Research on the use of interpreters in psychotherapy with refugee children provides some helpful insights. One expert in child and adolescent psychiatry has pointed out that when child therapists work with interpreters, it is best to have the same interpreter for all the treatment sessions. The child has to feel safe regarding confidentiality and impartiality, so this should be spoken about openly in the first session.²⁴

Interpreters working with children therefore need particular skill to communicate appropriately with them, establish trust, and not 'exclude, discredit or distort' their voices.²⁵ Just as psychotherapists need to be conscious of how their task is complicated by the use of an interpreter, interviewers and decision-makers in asylum proceedings need to be aware of the extent to which their assessment of the claim may be influenced by the interpretation. In the course of this research, situations were observed where the actions of the interpreter had the potential to influence the credibility assessment.

²⁰ See for instance Phoenix Children's Hospital, 'Introduction to Medical Interpreting: Interpreting for Children', (Phoenix, 2008); Y. Leanza, 'Role of Community Interpreters in Pediatrics as seen by Interpreters, Physicians and Researchers', *Interpreting*, vol. 7, no. 2, 2005, pp. 167–92; A. B. Nilson, 'Exploring Interpreting for Young Children', *Translation and Interpreting*, vol. 5, no. 2, 2013, pp. 14–19.

²¹ Research on interpreting for children and adolescents in the asylum procedure has been conducted in Sweden by Olga Keselman, A.-C. Cederborg, M.E. Lamb, Ö. Dahlström and P. Linnell. For details, see the relevant section of the Reading List.

²² O. Keselman, 'Restricting Participation: Unaccompanied Children in Interpreter Mediated Asylum Hearings in Sweden', Linköping Studies in Arts and Sciences 501, Linköping University, 2009, p. 15; O. Keselman, A.-C. Cederborg and P. Linnell, "'That is Not Necessary for You to Know!' Negotiation of Participation Status of Unaccompanied Children in Interpreter-Mediated Asylum Hearings', *Interpreting*, vol. 12, no. 1, 2010, pp. 83–104 at p. 86.

²³ Austria, Federal Ministry of the Interior, *Dolmetschen im Asylverfahren. Handbuch*. (Interpreting in the Asylum Procedure. A Handbook), 2006, p. 62.

²⁴ G. J. Björn, 'Ethics and Interpreting in Psychotherapy with Refugee Children and Families', *Nordic Journal of Psychiatry*, vol. 59, 2005, pp. 516–21 at p. 517.

²⁵ O. Keselman, 'Restricting Participation', p. 33.

3.1 Choosing the interpreter

The European Asylum Support Office stresses the importance of an interpreter who is not only well-trained but who has ‘good skills at communicating with children’. EASO recommends selecting an interpreter who speaks the same dialect as the child, to avoid both linguistic and cultural misunderstandings. It is also recommended to choose an interpreter who can be physically present at the interview, and to avoid video-conferencing in child applications, as video-conferencing can make the child uncomfortable and limit disclosure.²⁶

UNHCR concurs that interpretation needs ‘special care’ in children’s cases,²⁷ and notes that the cultural and linguistic background, age, gender and other personal characteristics of an interpreter may be factors for consideration in selecting the interviewer.²⁸ National guidance also stresses the importance of selecting an appropriate interpreter. For example, the Swedish Migration Board gives preference to interpreters “*known to communicate well with children*”²⁹ and therefore informs the agency providing interpreters, whenever an upcoming case involves an unaccompanied child.³⁰

One stakeholder pointed out that the quality of interpreters varies enormously, so before interviewing a child she meets the interpreter to underline the need for a sensitive approach, a faithful translation, and respect for the child’s silences.³¹ She also asks the interpreter not to interrupt the child during long narratives, but rather to take notes so as to ensure an accurate consecutive interpretation.

3.2 Establishing trust

It is important that the child trusts the interpreter. The absence of trust can discourage the child from making full disclosure.³² Finland’s Guide for Interpreters underlines that children may find it particularly difficult to trust strangers.³³ Canada’s Immigration and Refugee Board has recommended assigning the interpreter as early as possible, so that a relationship of trust can be established with the child. This is an interesting recommendation, but it does not appear to have been put into practice.³⁴

One interpreter interviewed in this research stressed that the biggest single challenge in her work with child claimants was building trust. “*Partly they are very intimidated. ... You need to find out how to speak to them in order to gain their trust. ... If they sense any aggressiveness on the part of the interpreter ... they lose their trust very quickly.*”³⁵ In one case in this research, the child said that he had not given all the facts because when he was talking, the interpreter looked at him in a way that had frightened him. “*I thought that [if] I*

²⁶ EASO, Training module 6.1, *Interviewing Children*, Unit 3.2, Working with interpreters in child applications. EASO also notes that there may be cases where the child has lost all trust in adults from his or her community, in which case an interpreter from that region or community may actually discourage disclosure.

²⁷ UNHCR, ‘Interpreting in a Refugee Context’, Self-Study Module 3, 1 January 2009, p. 94.

²⁸ UNHCR, *Working with Unaccompanied Minors in the Community: A Family-based Approach* (1994).

²⁹ SMB, Manual for Migration Cases, section 37.2.

³⁰ SH 16, SH 17.

³¹ SH 55. The fact that silence may also convey a meaning is discussed by R. Kohli, ‘Understanding Silences and Secrets in Working with Unaccompanied Asylum Seeking Children’, in N. Thomas (ed.), *Children, Politics and Communication*, Bristol: Policy Press, 2009, pp. 107–22.

³² EASO, Training module 6.1 *Interviewing children*, Unit 3.2 Working with Interpreters in child applications.

³³ Finnish Immigration Service and Refugee Advice Centre, *Interpretation in the Asylum Process: Guide for Interpreters*, Helsinki, 2010, 12.

³⁴ Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65 (4) of the Immigration Act: Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues, 30 September 1996, no.3, part III (2) and footnote 17. Information on practice provided by UNHCR Canada.

³⁵ SH 82.

*say everything now, the interpreter will get angry with me and will hit me.*³⁶ A guardian related an incident in which a child felt that the interpreter was making fun of him and started to cry.³⁷

The EASO notes that trust may more easily be established when the interpreter and the child are of the same gender.³⁸ US guidance says that children who have been victims of gender violence “*may be very reluctant to share such information if the interpreter is of the opposite gender*”.³⁹ However, there can also be situations in which a child feels uncomfortable speaking in the presence of people of the *same* gender. In the course of this research, this was observed in several cases of boys who claimed to have been victims of sexual exploitation at the hands of men.

In most of the interviews observed in this project, the child seemed comfortable with the interpreter, and the interpreter behaved sensitively and compassionately. One interpreter said that she sometimes found herself in the position of having to reassure a child who appeared confused or frightened in the face of impatience displayed by the interviewer.⁴⁰

Indeed, an interpreter who comes from the child’s own culture is often the most familiar person the child meets in the course of the asylum procedure.⁴¹ However, trust can be undermined, or absent, if the child perceives the interpreter to represent the regime or ethnic group from which he or she has fled,⁴² or if the child thinks that the interpreter is allied with or partial towards the determining authority.⁴³ With this in mind, the US Training Module on Children’s Claims advises that “*in cases where the child appears to be uncomfortable with the interpreter, or where the interpreter does not appear to be interpreting correctly, asylum officers should stop the interview and reschedule with a different interpreter.*”⁴⁴

The asylum-seeking child may perceive the interpreter as a second ‘institutional gatekeeper’, another adult authority figure alongside the adjudicator – or even as a kind of co-adjudicator.⁴⁵ This perception can be aggravated by something as simple as seating arrangements, for instance if the child is seated on one side of the table and the interpreter and interviewer on the other. In this research, the good practice of ‘triangular’ seating was observed in many, but not all, instances.

Good practice in building trust was evidenced at the beginning of many interviews at which the interviewers introduced the interpreters, explained their role, the meaning of confidentiality, that they would speak in the first person and interpret verbatim. They also explained that the interpreter was impartial, and the meaning of impartiality. In many cases this introduction was set out patiently and thoroughly, in child-appropriate language. However, there were instances when the explanation was formal and quick and the language complex, and in such cases it was not clear how much the child actually absorbed.

Trust can be affected if there is confusion about the interpreter’s role. This may be the case if the interpreter is allowed to take on the role of adjunct interviewer. Situations were observed where the caseworker gave the interpreter the lead, instructing him to give the child ‘the usual’ explanation about the asylum procedure and the roles of the parties.⁴⁶ In some cases the interpreter was assigned additional duties that could create confusion about his or her role – for instance, being sent to collect the child from the waiting room.

³⁶ D/170/AFG/M/16.

³⁷ SH 63.

³⁸ EASO, Training module 6.1 *Interviewing children*, Unit 3.2: Working with Interpreters in child applications.

³⁹ USCIS, Asylum Officer Training Course, Guidelines for Children’s Asylum Claims, Part (V) C (2), at 22.

⁴⁰ SH 67.

⁴¹ R. Barsky, ‘The Interpreter as Intercultural Agent’, *The Translator*, vol. 2, no. 1, 1996, pp. 45–63 at p. 49.

⁴² EASO, Training module 6.1 *Interviewing children*, Unit 3.2 Working with interpreters in child applications.

⁴³ V. Plutzar, ‘Zwischen “Angst” und “Zeit” – zur Kommunikationssituation und Informationsweitergabe im Asylverfahren. Eine empirische Studie in der Erstaufnahmestelle Ost des Bundesasylamts’, PhD diss., University of Vienna, 2010.

⁴⁴ USCIS, Asylum Officer Training Course, Guidelines for Children’s Asylum Claims, part (V) C (2), at 22.

⁴⁵ I. Gomez Diez, ‘The Role of the Interpreter in Constructing Asylum Seekers’ Credibility: A Hearing at the Spanish Asylum and Refugee Office, *Sociolinguistic Studies*, vol. 4, no. 2, 2010, pp. 333–70 at p. 334.

⁴⁶ IV/02/TUR/M/17. The transcript nevertheless stated that the adjudicator had provided this information.

Sometimes the interpreter took the initiative to elaborate on questions asked by the interviewer, soliciting additional details or adding examples,⁴⁷ or even answering questions asked by the interviewer without involving the child.⁴⁸ Several interviewers felt obliged to remind the interpreter about his role.⁴⁹ Most of these instances involved non-professional interpreters, underlining the importance of using qualified interpreters in asylum procedures.

3.3 Child-specific interpretation

Like the interviewer, the interpreter needs to be able to adjust his or her expression to the child's age and maturity. If the interviewer asks a complex question, the interpreter may have to request permission to rephrase it in manner the child can understand. Internal guidance in Austria states:

*“Interpreters should be instructed by interviewers to take into account the often different expression and argumentation manner that children have as compared to adults, and to reflect these as accurately as possible. The interpreter should mirror the manner of speaking of minors and not alter the language of children and adolescents.”*⁵⁰

In the same vein, Finland's Guide for Interpreters explains:

*“The interpreter must take into account that there are often differences between the language used by children and adults. Children may find it difficult – even more so than adult asylum seekers – to trust strangers and to discuss difficult matters. With children, the tone of voice, body language and facial expressions may be more significant than purely verbal communication. The interpreter must take into account the child's development and use suitable language.”*⁵¹

Several interpreters confirmed the importance of adapting their language for children:

*“In the beginning ... I interpreted for minors in the same way as for adults. Until I realized that ... minors don't understand the vocabulary that I use for adults. I really had to learn that. It was a challenge for me to formulate sentences in a way that the minor can understand what is meant.”*⁵²

*“When I translate for children I simplify the language and try to find different ways to say the same thing, so as to be sure that they understand.”*⁵³

On several occasions observed in this research, the adjudicator reminded the interpreter to adhere to the minor's linguistic level, and not to change the child's expressions. In one case the adjudicator instructed the interpreter that *“the different expression and argumentation of minors should be taken into account and interpreted as exactly as possible.”*⁵⁴ An asylum manager stressed that interpreters should not submit pre-formulated answers for entry into the interview report, but should repeat the response in the child's own words.⁵⁵

⁴⁷ IV/58/ERI/F/17, IV/61/GMG/M/17, IV/62/NGA/M/19.

⁴⁸ IV/53/SEN/M/17; IV/61/GMB/M/17.

⁴⁹ IV/60/ERI/M/15, IV/61/GMB/M/17.

⁵⁰ Austria, (former) Federal Asylum Office, Quality Criteria for Interpreters (*Qualitätskriterien: Dolmetscher im Asylverfahren*), Version of 2 July 2008, at I (H). At the time of the research, the new Federal Office for Immigration and Asylum was working on similar Quality Criteria.

⁵¹ Finnish Immigration Service and Refugee Advice Centre, *Interpretation in the Asylum Process: Guide for Interpreters*, Helsinki, 2010, p. 12.

⁵² SH 82.

⁵³ SH 59.

⁵⁴ D/05/AFG/M/14.

⁵⁵ SH 89.

The EASO training module on interviewing children draws attention to the importance of interpreting not just *what* the child says, but also *how* it is said, including understanding the nuances of words and expressions as well as gestures and body language.⁵⁶ As discussed later in this chapter, the interpreter treads a fine line between enabling the adjudicator to understand the child's individual and contextual circumstances, and influencing the credibility assessment.

3.4 Accuracy and completeness

The importance of interpreting accurately and completely in asylum proceedings is self-evident. EASO emphasizes the necessity for verbatim interpretation, and states that the interpreter must not add or edit what is said on either side.⁵⁷ One interviewer reminded the interpreter of this: *"The interpreter is instructed not to choose a meaning on his own in the case of plural meanings of a word, but to state both or at least to mention this circumstance ... because otherwise the credibility of the asylum-seeker could be impaired."*⁵⁸

In the majority of cases observed, the communication between the applicant, interpreter and interviewer appeared to be good, but this was not uniformly so. Several interviewers interrupted the interview to ask the child and the interpreter if there were communication problems and, in a few cases, the child was offered the possibility of suspending the interview and resuming with a different interpreter.⁵⁹ Sometimes, while the interpreter could communicate well with the child, he or she spoke the language of the asylum country with difficulty and did not seem to communicate well with the interviewer.⁶⁰ One instance was observed where the interviewer understood the child's mother tongue and completed the record with elements that were critical for the child's case but had been omitted by the interpreter.⁶¹

A group of lawyers expressed concern that interpreters are sometimes reluctant to admit to communication difficulties, and instead blame the child for being deliberately misleading.⁶² An example of this was observed when a child complained after the interview that he had not understood the interpreter. The determining authority wrote to the agency that had provided the interpreter, questioning the qualifications of the latter, and received this written response: *"According to the interpreter, the applicant understood everything that was said. ... The interpreter believes that the applicant deliberately wanted to impede the communication and exaggerated the differences in dialect."*⁶³

This comment appeared to violate the principle of impartiality and had the potential to influence the assessment of the child's credibility.

Children may be more hesitant than adults to admit that they do not understand the interpreter. Active listening on the part of the interviewer, who should be attentive to signs of discomfort or miscommunication, is therefore particularly important. An Afghan boy for whom interpretation was being provided by an Iranian interpreter told UNHCR: *"I didn't understand the Iranian interpreter 100 per cent ... but I did not dare to say this. It would have been impolite toward the interpreter."*⁶⁴

⁵⁶ EASO, Training module 6.1 *Interviewing children*, Unit 3.2, Working with interpreters in child applications.

⁵⁷ EASO, Training module 6, *Interview techniques*, Unit 3.2 Working with an interpreter.

⁵⁸ D/12/AFG/M/14.

⁵⁹ IV/54/SEN/M/17, IV/58/ERI/F/17.

⁶⁰ IV/53/SEN/M/17, IV/62/NGA/M/19.

⁶¹ IV/113/SYR/M/17. In this case the child related an attack on his hometown in which his brother was killed. The interpreter neglected to repeat that the child's brother lost his life, though this was critical to the decision that the boy should leave the country. The interviewer noticed this omission and added the critical fact to the protocol.

⁶² SH 29.

⁶³ D/133/AFG/M/15.

⁶⁴ UNHCR Austria, *UBAUM*, p. 24.

In some cases, the applicants themselves understood enough of the interviewer's language to monitor the work of the interpreter. In a case audited by UNHCR in the context of a parallel research project, a child said:

*"The judge and the interpreter, they spoke to each other here and there. I understood a bit. The interpreter said that I am surely older than I claim. I then said that I am 13. The interpreter was confused and asked me if I could understand him. After that he interpreted better. They can't just interfere. It would be better if they didn't speak with each other at all."*⁶⁵

In another instance, the guardian recognized that the translation was incomplete and intervened to correct it. The guardian's intervention proved decisive for the claimant. The exchange went like this:⁶⁶

Interviewer: "Are you married?"
Applicant: "No, but I am engaged."
Interpreter: "No, not married."
Guardian: "He also said something else. Interpreter, please translate."
Interpreter: "He said that he is engaged."
Interviewer: "Where is your girlfriend now?"
Applicant: "I do not have a girlfriend, I have a boyfriend."

This was not the only case in which the guardian intervened to facilitate communication, when the interpreter appeared not fully to understand or translate what the child was saying. "You understand [the language of the Member State]," another guardian said to the child. "Try to listen to what the interpreter says so you can tell us if something is missing or if you meant something else."⁶⁷ This seems a heavy burden to place on a child who is entitled, according to the Asylum Procedures Directive, to an interpreter able to ensure 'appropriate communication'.⁶⁸

3.5 Excluding, discrediting or distorting the voice of the child

Accurate interpretation is an integral part of ensuring the child's right to be heard. Without knowledge of both the child's language and the language of the country of asylum, it is difficult to assess how faithful the interpreter remained to the voice of the child. However, it was noted that many interpreters did not use the first person singular when interpreting the child's statements, but rather put them into the third person: He/she says that...⁶⁹ A few instances were observed, where the interpreter answered questions for the child. For instance, one interpreter answered a question asked by the interviewer ("what is a rickshaw?"), instead of letting the child reply.⁷⁰

Interviewers also need to take care not to engage in side exchanges with interpreters.

In some cases the interpreter was on the receiving end of remarks that the interviewer did not intend the child to hear. One interviewer, reflecting a general mind-set of disbelief, said to the interpreter: "In any

⁶⁵ Ibid.

⁶⁶ IV/62/M/NGA/19.

⁶⁷ IV/53/SEN/M/17.

⁶⁸ *Asylum Procedures Directive (recast)*, Article 15 (3) (c).

⁶⁹ In one country of focus, for instance, all but four interpreters observed in this research spoke in the 3rd person.

⁷⁰ IV /01/AFG/M/16.

case we have a real minor today” and “if he [the child] wants a break, he can say so. But the lawyer will get more expensive.”⁷¹ On another occasion the interpreter explained that the city of Aleppo (Syria) has been completely destroyed in the civil war; the adjudicator remarked sarcastically: “Good for the construction industry.”⁷² Even if meant in jest, such comments suggest a lack of empathy for children in a very stressful situation. Translation of these remarks would have been upsetting for the children, yet in the absence of translation, they were left to wonder what the adults were talking about and may have felt anxious and excluded. This may in turn have affected their ability to disclose their experiences. Such side exchanges may reinforce children’s fears that the interpreter is not impartial.

There were also exchanges between the child and the interpreter that were not translated for the interviewer. These instances involved efforts by the interpreter to seek clarification, but may have resulted in accounts that were influenced by the interpreter. Sometimes, after long statements by the child and back-and-forth exchanges with the interpreter, the interpretation for the record was quite short.⁷³

Interpreters should take care not to modify the style or content of children’s statements.⁷⁴ An official of a determining authority commented: “it is very important to instruct the interpreter to adapt to the situation and not to try to submit pre-formulated answers to the adjudicator, which can be protocolled.”⁷⁵ Some responses of children that were documented in transcripts reviewed in the research did not sound like something a child would have said, for instance: “I cannot identify any obstacles which impede me from answering thoroughly the questions which are posed to me.”⁷⁶ Decision-makers need to be alert to the risk of ‘transcript-friendly’ interpretation.

3.6 Impartiality

The Asylum Procedures Directive requires Member States to ensure that decisions on applications for international protection are taken impartially.⁷⁷ Impartiality on the part of interpreters is also important. The interviewer should therefore not use the interpreter as a source of information and the interpreter should refrain from commenting on the accuracy or plausibility of the applicant’s statements. The interpreter does not take sides; any conflict of interest, or appearance of conflict of interest, must be avoided.⁷⁸

In most of the cases observed, the interpreter remained impartial. But there were instances where decision-makers may have been influenced by comments made by the interpreter. In one case, a decision-maker (who ultimately considered the child to have given an inconsistent account) may have been swayed by comments of the interpreter. The exchange went like this:

Interviewer: “Was it the Taliban who told the other families?”

Child: “Yes, they had heard that the Taliban were particularly looking for our family.”

Lawyer: “I don’t really follow this.”

Interpreter: “Me neither. You must understand that he [the child] speaks inconsistently.”⁷⁹

⁷¹ IV/05/AFG/M/13.

⁷² IV 07/SYR/M/15.

⁷³ In these cases, the researcher did not understand the language spoken by the applicant, and therefore could not assess the content of the exchanges.

⁷⁴ O. Keselman, ‘Restricting Participation’, p. 6.

⁷⁵ SH 89.

⁷⁶ D/002/AFG/M/16

⁷⁷ Asylum Procedures Directive (recast), Article 10 (3) (a).

⁷⁸ Austria, (former) Federal Asylum Office, Binding Instruction on Interpreters (*Verbindliche Arbeitsanleitung Dolmetscher*), p. 8. At the time of the research, the new Federal Office for Immigration and Asylum was working on a similar binding instruction.

⁷⁹ D123/AFG/M/16.

One stakeholder, a legal representative, said that interpreters frequently comment on the credibility of child applicants, both to the child's advantage and to the child's detriment.⁸⁰ Another agreed, pointing out that some interpreters want to help the child so much that they sometimes add information.⁸¹ In a case observed in the research, the interpreter adopted a fatherly attitude, elaborating on the child's answers and explaining inconsistencies. The interviewer drew attention to this, but it clearly affected the overall communication and created tension between the interviewer and the interpreter.⁸²

Several interpreters expressed discomfort at being asked by interviewers to depart from a posture of strict impartiality, and to help assess the child's testimony. For instance, one interpreter said he was asked: *"Interpreter, is that correct, is there a big mosque with that name, which is so famous?"*⁸³ Another related that interviewers sometimes ask him if he thinks an applicant is telling the truth.⁸⁴ Still another interpreter said that he is occasionally asked whether he can identify the child's origin from his or her dialect, but always replies that it is not part of his job to do this.⁸⁵ The UK Asylum and Immigration Tribunal has cautioned: *"It is no part of an interpreter's function to report on the language or dialect used. ... An interpreter should not be in the position of giving or being asked to give, evidence on a contested issue."*⁸⁶

3.7 Cultural mediation

Views differ about the extent to which an interpreter in the asylum procedure should also serve as a cultural mediator.⁸⁷ The EASO points out that the interpreter is not only the person to whom the child speaks and listens but is often seen by the child as *"a mediator between the home and host societies"*. The former Austrian Asylum Office highlighted the importance of communicating the 'cultural context' of the applicant's statements⁸⁸ and affirmed that *"interpreters do not just translate words, they are cultural mediators – but not subject matter experts."*⁸⁹

One interpreter said that when the interviewer asks him to stress to the applicant the importance of telling the truth, he asks for permission to explain it in a cultural context, as follows:

*"In Mandingo we say that if a dead person hides from the one who will wash him, he will go to the grave dirty. When I am asked to invite the applicant to tell the truth, I ask permission to use this expression, because it will help the applicant to understand that telling the truth is in his own interest."*⁹⁰

Several stakeholders felt that when the interpreter acts as cultural mediator it can be positive for the quality of the interview.⁹¹ Some interviewers pointed out that in children's cases, the interpreters are sometimes best able to decipher early signs of tension and provide important information on the way the child speaks.⁹²

⁸⁰ SH 86.

⁸¹ SH 30.

⁸² IV/53/SEN/M/17.

⁸³ SH 80.

⁸⁴ SH 47.

⁸⁵ SH 67.

⁸⁶ AA (*Language Diagnosis: Use of Interpreters*) *Somalia v. Secretary of State for the Home Department*, [2008] UKAIT 29, 9 April 2008.

⁸⁷ Robert Barsky argues in favour of the role of the interpreter as intercultural agent (see his 'The Interpreter as Intercultural Agent', *The Translator*, vol. 2, no. 1, 1996, pp. 45–63. In contrast, in Sabine Fenton's research in New Zealand, the interpreters objected to any widening of their role. See S. Fenton, 'Expressing a Well-Founded Fear: Interpreting in Convention Refugee Hearings', (n.d.), available at: <http://www.refugee.org.nz/Reference/Sabine.html>

⁸⁸ Austria, (former) Federal Asylum Office, Quality Criteria: Interpreters in the Asylum Procedure (*Qualitätskriterien: Dolmetscher im Asylverfahren*), 2 July 2008, at G.

⁸⁹ Austria, (former) Federal Asylum Office, Binding Work Instruction on Interpreters, 17 July 2008.

⁹⁰ SH 67.

⁹¹ SH 16, SH 9.

⁹² SH 55.



A lawyer also commented that when a potential credibility issue arises due to cultural differences, it can be helpful for the interpreter to explain the issue in its cultural context.⁹³ One adjudicator remarked: *“I am grateful for such hints ... I am dependent on the interpreter, because I can’t judge this for myself.”*⁹⁴

Neutral explanations were observed, for instance, when an interpreter explained what a certain type of veil was, or clarified dates in different calendars,⁹⁵ but there were also instances where the interpreter appeared to go beyond the role of providing cultural context neutrally. In the case of a Syrian boy, an interpreter volunteered: *“in Islamic countries the birth date is not so important.”* In the same case, after the adjudicator expressed doubt about the applicant’s ethnicity, the interpreter said: *“I can only say that he is a Kurd because his name is Kurdish.”*⁹⁶ In another case, the interpreter inappropriately intervened to advise the interviewer that school directors and teachers in Syria *“dare to do everything.”*⁹⁷

The interpreter is not an expert witness, and interviewers and decision-makers need to be aware that the line between providing cultural context and being drawn into the proceedings is a thin one. Where the interpreter provides the interviewer with culturally-specific explanations, he or she still needs to remain impartial, and not give advice to either party, or initiate questioning.

⁹³ SH 29.

⁹⁴ SH 78.

⁹⁵ IV/107/SOM/F/15; IV/114/AFG/M/16.

⁹⁶ IV006/SYR/M/17.

⁹⁷ IV/007/SYR/M/15.

4. The Interpreter is also Affected

Like the interviewer, interpreters have to negotiate the emotional consequences of their work.⁹⁸ It can be hard for an interpreter to listen to the often very distressing experiences of children. In many cases the interpreter originates from the same country or community as the child and may have had similar experiences in the country of origin, or may have a child of a similar age.⁹⁹ Listening to the child may bring to mind the interpreter's own experiences.

In Chapter 3 it was pointed out that if interviewers experience vicarious trauma, this can have an impact on how they assess the credibility of applicants. Similarly, the emotional impact on interpreters of their engagement in children's cases should be taken into account, as it can have an effect not only on their own mental health but also on their work.

There has been extensive study of vicarious trauma among mental health professionals, social workers, lawyers, judges, aid workers and others, but little examination of how repeated exposure to distressing information affects interpreters.¹⁰⁰ Interpreters can also experience vicarious trauma as a result of repeated exposure to traumatic information.¹⁰¹ This may affect their ability to translate completely and accurately what the applicant says.¹⁰² Finland's Guide for Interpreters therefore provides that "*if the interpreted matter causes the interpreter to experience such strong emotion that he or she cannot hide it, he or she must terminate the assignment.*"¹⁰³

Support mechanisms to help interpreters cope with the emotional impact of their work are not routinely available. Determining authorities may wish to consider ways of building such mechanisms into their practice.¹⁰⁴

⁹⁸ C. Baillot, S. Cowan and V. Munro, 'Second-hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context', *Journal of Law and Society*, vol. 40, no. 4, 2013, pp. 509–40, at p. 513; R. Morris and J. Colin, *Interpreters and the Legal Process*, Winchester: Waterside Press, 1996, p. 62.

⁹⁹ Baillot, Cowan and Munro, 'Second-hand Emotion?' p. 525.

¹⁰⁰ G. J. Björn briefly tackles the subject in 'Ethics and Interpreting in Psychotherapy with Refugee Children and Families', noting for instance: '*If the interpreters have not worked through their own migration crisis they may all too easily take over the grief of the patient*' (p. 519).

¹⁰¹ K. Baistow, 'The Psychological and Emotional Effects of Community Interpreting', Paper presented to the Babelae Conference on Community Interpreting, Vienna, 1999; M. Lor, 'Effects of Client Trauma on Interpreters: An Exploratory Study of Vicarious Trauma', St Catherine's University (St Thomas), Master of Social Work Clinical Research Paper 53, 2012; R. Muller, 'Talking about Trauma: Vicarious Trauma and the Professional Interpreter', *Psychology Today* (online), 2 August 2013.

¹⁰² Some research suggests that when the human brain is triggered by trauma, the limbic system takes over and the left side of the brain (which controls language) essentially shuts down. This could explain why some interpreters find it difficult to convey the messages they are hearing. 'Vicarious Trauma in Interpreting', Express Language Solutions Blog, posted 2 July 2012.

¹⁰³ Finnish Immigration Service and Refugee Advice Centre, *Interpretation in the Asylum Process. Guide for Interpreters*, Helsinki, 2010, p. 9.

¹⁰⁴ H. Ravel, 'Being Heard and Understood in the Context of Seeking Asylum and Refuge: Communicating With the Help of Bilingual Co-workers', *Clinical Child Psychology and Psychiatry*, vol. 10, no. 2, 2005, pp. 197–216 at p. 201.

5. Conclusion

Distortion of the applicant's testimony is always a risk when interpreters are used. Many of the issues outlined in this chapter arise in adult asylum-seekers' cases as well as those of children. Accuracy, impartiality and confidentiality on the part of the interpreter are critical in all cases. However, the possible impact of interpretation on the credibility assessment may be greater in the case of child claimants, as the interpreter (consciously or not) may feel less constrained, and tend to take on either the role of 'co-interviewer' or of 'co-author' of the child's narration.¹⁰⁵ The child, in turn, may be less able than an adult to admit to problems in communicating with an interpreter. Interpreters, guardians, legal advisers and interviewers need to be aware of these risks.

Working to minimize the distortion that results from using an interpreter should be an ongoing objective. Training can help to achieve this. It is positive that the EASO urges Member States to provide specialized training to interpreters working with children:¹⁰⁶ *"It is crucial that interpreters also receive specialized training. They should be aware of the differences between interviewing adults and interviewing children and have the necessary skills and competences needed to communicate with children on a professional basis."*

Belgium is reported to provide specific training for interviewers who work on children's cases.¹⁰⁷ There are also elements in Sweden's training for authorized interpreters that cover interpreting for child claimants.¹⁰⁸ More systematic training for interpreters engaged in children's asylum procedures, and for interviewers on how to work with interpreters in children's cases, would help to ensure conditions for meaningful participation of asylum-seeking children.¹⁰⁹

¹⁰⁵ I. Gomez Diez, 'How the Officials' Styles of Recording the Asylum Seekers' Statements in Reports Affect the Assessment Of Applications: The Case of Belgian Asylum Agencies', *Text & Talk*, vol. 31, no. 5, September 2011, pp. 553–77.

¹⁰⁶ EASO, Training module 6.1 *Interviewing children*, Unit 3.2 Working with interpreters in child applications.

¹⁰⁷ According to information the Office of the Belgian Commissioner General for Refugees and Stateless Persons provided to UNHCR, this training covers theoretical aspects of the Dialogical Communication Method (see Chapter 4), as well as the interpreters' code of conduct.

¹⁰⁸ SH 36.

¹⁰⁹ SH 36, SH 78, SH 82, SH 89.

CHAPTER 6

Credibility Assessment in Practice

In this chapter, we look at *how* asylum authorities reach conclusions on the credibility of evidence presented by unaccompanied and separated children. The researchers reviewed 124 first instance decisions in four countries – a small sample, but one that nevertheless provided insight into state practice. The examination of state practice was particularly instructive given the paucity of state guidance and case law on credibility assessment in children’s claims. An important constraint on the case review, as explained in Chapter 2, was the fact that in two of the four countries of focus, decisions recognizing refugee status do not contain individualized reasons.

The chapter briefly reviews key principles of credibility assessment that are particularly important in children’s cases, and the place of credibility assessment in the decisions examined in this research. It then discusses the principal indicators used by adjudicators in reaching their conclusions, and closes with some suggestions for improving the practice of credibility assessment in children’s cases.

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1. Key Principles of Credibility Assessment

The *Beyond Proof* report sets out ten principles to guide credibility assessment. These are as follows:¹

- The duty to substantiate the application is shared between the applicant and the adjudicator.
- Each application for international protection must be examined individually.
- The assessment must be objective and impartial.
- The assessment must be evidence based.
- The assessment must focus on material facts.
- The applicant must be given the opportunity to comment on potentially adverse credibility findings.
- The credibility assessment must be based on the entire evidence.
- Close and rigorous scrutiny of the asserted material facts is required.
- The applicant should be given the benefit of the doubt when he or she has made a genuine effort to substantiate the claim, yet an element of doubt remains in relation to some of the facts he or she has put forward.
- The decision-maker must take a structured approach to the assessment of credibility, and reach clear and unambiguous credibility findings.
- Several of these principles have particular salience in children's cases, as discussed further below.

1.1 The shared duty to substantiate

Chapter 4 (Gathering the Facts) explains that in children's cases the authorities have an 'enhanced' duty to help the applicant substantiate the claim. In the words of UNHCR's *Guidelines on Child Asylum Claims*: "Although the burden of proof is usually shared between the examiner and the applicant in adult claims, it may be necessary for an examiner to assume a greater burden of proof in children's claims, especially if the child concerned is unaccompanied."²

It is of fundamental importance that an asylum-seeking child be treated as a child. Child witnesses are afforded extensive protections in other areas of law. Unaccompanied, asylum-seeking children are arguably in an even more precarious situation than children involved in other legal processes: they are in a strange environment, dependent on the intermediary of an interpreter, and taking part in a complex procedure that will determine their future. The 'shared duty' needs to be understood from this perspective.

¹ UNHCR, *Beyond Proof*, Chapter 2, pp. 34–52.

² UNHCR, *Guidelines on Child Asylum Claims*, para. 73



1.2 Taking individual and contextual circumstances into account

EU law stipulates that Member States must examine asylum applications on an individual basis.³ The decision-maker must take into account the “*individual position and personal circumstances of the applicant, including factors such as background, gender and age.*”⁴

In the case of children, this means that an adjudicator “*must not draw an adverse credibility inference from omissions in the child’s knowledge or account if it is likely that their age or maturity is a factor.*”⁵ As one national court explained:

*“A child, by reason of his lack of knowledge, experience and maturity, cannot be expected to comply with procedures in the same way as an adult. Of course, a child may lie as well as tell the truth, but he may also find it more difficult to answer questions with the necessary understanding and insight.”*⁶

There is no doubt that decision-makers face a real challenge in evaluating testimony from children who come from dozens of different countries and cultures, and have experienced displacement, separation from their families and other traumatic events. Some have been coached by parents, peers or smugglers about what to say to the asylum authorities. It is not enough for the decision-makers to have a generic understanding

³ Qualification Directive (recast) Article 4: ‘The assessment of an application for international protection is to be carried out on an individual basis’ and the Asylum Procedures Directive (recast), Article 10 (3) (a): ‘Member States shall ensure that ... applications are examined and decisions are taken individually, objectively and impartially.’

⁴ Qualification Directive (recast), Article 4 (3) (c), emphasis added.

⁵ UK Home Office, Border and Immigration Agency, *Processing Asylum Applications from a Child* (2005), Section 16.4.

⁶ *R (on the application of Blerim Mlloja) v Secretary of State for the Home Department* [2005] EWHC 2833 (Admin).

of children's cognitive development. They must make an *individual* assessment. State guidance explains that they must “*assess evidence provided by a child in light of their age and degree of mental development and maturity currently and at all material times in the past, together with any knowledge of their personal, family, cultural and educational background.*”⁷

An evaluation of this sort encompasses insights from various disciplines, from child psychology to neurobiology to cultural and gender studies, for example. Neither the interviewer nor the decision-maker can be expected to be an expert in all of these fields. The extent to which the determining authorities can bring multidisciplinary expertise and empirical evidence to bear on the status determination process, through professional development activities and other means, will have an impact on the quality of the decision-making.

1.3 Ensuring an objective and impartial assessment

Adults tend to believe that they know what children think and how they behave. Yet, the examination of asylum applications must not only be individual, it must also be *objective* and *impartial*.⁸ This means that the adjudicator has to set aside his or her own experiences and beliefs about children. On some occasions during this research, comments that interviewers and decision-makers made, such as “*a six-year-old child knows this here*”⁹ or “*the claim looked to me invented*” suggest that they had not entirely succeeded in doing so.¹⁰

Adjudicators need to avoid drawing adverse inferences from the fact that the child's experience is one that is outside their own realm of experience. In the case of a girl who seemed to be a victim of trafficking, the interviewer mused: “*how come things happen to you? You trust the owner of a bar; you trust [the trafficker]; you trust a man at the bus station?*”¹¹ That the girl had placed trust in strangers was foreign to the interviewer's own experience, yet the girl's claim was nevertheless found credible.

Stakeholders noted that it can be difficult for decision-makers to maintain impartiality in the face of the political and social pressures that accompany the arrival of large numbers of unaccompanied children. On the one hand, decision-makers are instructed to take the age, level of maturity and inherent vulnerability of children into account. On the other hand, there is often pressure to make decisions rapidly and firmly in order to counter abuse.¹² One decision-maker noted that “*cases of children are politically sensitive. There has been a focus in the media on specific cases. A case can make it to the front page. This should not influence a decision, but it requires high professional standards.*”¹³

⁷ UK Home Office, Border and Immigration Agency, *Processing Asylum Applications from a Child* (2005), Section 13.1.

⁸ *Asylum Procedures Directive (recast)*, Article 10 (3) (a).

⁹ D/02/AFG/M/16.

¹⁰ D/53/SEN/M/17.

¹¹ D/168/GIN/F/16.

¹² On these tensions, see J. Bhabha, ‘Minors or Aliens? Inconsistent State Intervention and Separated Child Asylum-Seekers’, *European Journal of Migration and Law*, vol. 3, 2001, pp. 283–314.

¹³ SH 7.

1.4 Focus on material facts

In the *Beyond Proof* report, UNHCR encourages a credibility assessment that focuses on the material facts the applicant asserts. However, that report observed that EU Member States devote considerable attention to the ‘general’ or ‘personal’ credibility of the asylum-seeker. This was also true of the children’s cases reviewed in this research.

Article 4 (5)(e) of the Qualification Directive requires the ‘general credibility’ of the applicant to be established when he or she is unable to substantiate aspects of the application with documentary or other evidence. The EAC addresses behaviour that may be thought to affect the applicant’s ‘personal credibility’.¹⁴ It is unclear whether this concept is identical to that of ‘general credibility’. Further guidance on the interpretation of this term would seem to be warranted. UNHCR believes that the focus should be on the general credibility of the account the applicant provides, not on the individual’s credibility as such.

1.5 The benefit of the doubt

The notion of the benefit of the doubt is contained in the Qualification Directive, although the English text does not use the term.¹⁵ Article 4 (5) enumerates the conditions under which an applicant’s statements do not need to be confirmed by documentary or other evidence – in other words, when the benefit of the doubt may be accorded. The concept appears in the Asylum Procedures Directive only in connection with age assessment: If there is still doubt about a child’s age after an age assessment has been conducted, it shall be assumed that the applicant is a minor.¹⁶ The EAC defines ‘benefit of the doubt’ but does not offer guidance on the application of the concept to children’s cases.¹⁷

With regard to the establishment of the facts, UNHCR’s Handbook states:

“After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. ... It is hardly possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement, the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.”¹⁸

UNHCR has called for a ‘liberal’ application of the benefit of the doubt in children’s cases¹⁹ and in specific guidance on children clarified further:

“The problem of ‘proof’ is great in every refugee status determination. It is compounded in the case of children. For this reason, the decision on a child’s refugee status calls for a liberal application of the principle of the benefit of the doubt. This means that should there be some hesitation regarding the credibility of the child’s story, the burden is not on the child to provide proof, but the child should be given the benefit of the doubt.”²⁰

¹⁴ EASO Training module 7, *Evidence Assessment*, Unit 4.1: Behavior which may affect the applicant’s ‘personal credibility’.

¹⁵ The Dutch version of the *Qualification Directive (recast)* uses the term ‘voordeel van de twijfel’ (benefit of the doubt). It does not appear in other language versions.

¹⁶ *Asylum Procedures Directive (recast)*, Article 25 (5).

¹⁷ The EASO Training module on evidence assessment defines the ‘benefit of the doubt’ as follows. ‘Where a material fact appears to be internally credible, but the claim cannot be corroborated by country-of-origin information or other evidence, or when there is a lack of document or no document at all, and the application was otherwise credible in relation to other material facts, which were considered coherent, consistent and in accordance with objective evidence and COI, you should consider giving the applicant the benefit of the doubt. That is to say to accept the material fact even if there is no document or no other evidence than the document to support it’ (Module 7, Unit 3.1).

¹⁸ *UNHCR Handbook*, para. 203.

¹⁹ *UNHCR Handbook*, para. 218.

²⁰ UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p. 101.

The UK Home Office takes a similar position. *“The benefit of the doubt will need to be applied more generously when dealing with a child, particularly where a child is unable to provide detail on a particular element of their claim.”*²¹

Two countries of focus – the Netherlands and Sweden – explicitly recognize the principle of the benefit of the doubt in relation to asylum cases in law, policy and case law.²² This is not the case in Austria or Italy. Stakeholders interviewed in all four countries said that they used the principle of the benefit of the doubt in children’s cases, even if it appeared that this meant different things to different people, as illustrated by the following examples:

*“I give the benefit of the doubt when I have the impression that the child cooperated.”*²³

*“If due to lack of plausibility or internal coherence I have doubts about the credibility of some material facts of the claim, I assess them against COI. If COI does not give me enough information to accept or reject the facts, then I apply the benefit of the doubt.”*²⁴

*“I look at the case and say: this I believe, this I do not. Based on this I come to a conclusion on the case. The threshold for the benefit of the doubt is lower ... factors are age and what can one expect the child to tell.”*²⁵

*“One has to accept that a child often is instructed and influenced. Keeping this in mind, the benefit of the doubt needs to be given.”*²⁶

*“If I have doubts if someone is in need of protection or not, then I have to decide ‘in dubio pro fugitivo’ – for the refugee.”*²⁷

From these statements it appears that some decision-makers apply the concept in a structured manner to the asserted facts, while others apply it in an unstructured way to the claim as a whole. How to apply the benefit of the doubt in the context of assessing credibility in children’s cases would appear to merit more attention in national guidance and training.

²¹ UK Home Office, *Processing an Asylum Application from a Child*, p. 41.

²² Sweden’s Migration Court of Appeal, Judgment of the MCA: MIG 2007:12, 19 March 2007: ‘a precondition for the asylum-seeker to be granted the benefit of the doubt is when he or she has made a genuine effort to establish his or her account and the general credibility is not disputed.’ Netherlands IND Work Instruction 2010/14 on Decision-Making: Assessment of Credibility and Weight (of asylum reasons), para. 4.1 (e) explains: ‘Assessing whether declarations are credible includes determining if the benefit of the doubt can be granted. The alien’s statement may be considered credible even if it contains some implausible elements. Thus, an alien may be given the benefit of the doubt despite inconsistencies, vague or not unsubstantiated statements, if these do not pertain to the core of the claim. They may for instance concern peripheral elements unrelated to the reasons for departure and that do not affect the central part of the claim, as long as none of the conditions named in Article 31, para. 2, a–f of the Aliens Law is present. Where one of these is present, it will normally be concluded that the statements about the factual conditions, events and assumptions of the alien are not credible and the benefit of the doubt should be less readily granted.’ In Austria it is explicitly set out only in connection with cases where age assessment does not yield a clear result (Austria, Federal Asylum Procedure Act, Article 13, para. 3.) The Austrian Asylum Court, while not referring explicitly to the benefit of the doubt, has confirmed that a claim is credible if the reasons in favour of the accuracy of the presentation of the facts outweigh the doubts (AsyIGH, D10 406.192-1/2009, 14 May 2009).

²³ SH 3.

²⁴ SH 71.

²⁵ SH 6.

²⁶ SH 4.

²⁷ SH 89.

2. The Threshold for Accepting Material Facts as Credible

The principle of the benefit of the doubt discussed above reflects the fact that it is difficult to ‘prove’ asylum claims, and that the consequences of an error in assessment are potentially grave. For these reasons, a decision-maker does not need to be fully convinced of an asserted fact to accept it as credible.²⁸ In the four countries of focus, while the applicant is expected to substantiate his or her claim, it was noted that the threshold for accepting asserted facts as credible was not always clearly articulated in law or administrative instructions, and inconsistencies were observed both between and within individual countries.

In Austria, the current (2005) Asylum Act does not specify the threshold for credibility, nor is this clarified in the explanatory notes to the Act. Decision-making practice was observed to follow the principle articulated in case law that *“in contrast to proving a fact, in order to make something credible it is sufficient to demonstrate that it is probable; the reasons speaking in favour of accepting a fact must outweigh those that speak against it.”*²⁹

In Italy, from the decisions surveyed and the deliberations of the Territorial Commissions attended, it was not possible to identify a defined threshold for the credibility assessment. Only a handful of decisions mentioned a standard: ‘reasonable likelihood’, ‘sufficient certainty’, ‘evident’, or ‘possible’ were all cited. In general, a flexible approach to children’s claims was observed, but the absence of an identified threshold may leave room for subjective assessment.

In the Netherlands, as discussed elsewhere in this report and in *Beyond Proof*, two different thresholds of credibility may apply. The general rule is that an applicant’s statements must be ‘plausible’.³⁰ However, if one or more of the circumstances mentioned in Article 31 (2) (a)–(f) of the Aliens Act 2000 are present,³¹ the applicant has to be more convincing (‘positively persuasive’) in his or her statements than if such circumstances are absent. The standard of positive persuasiveness is not met if there are any ambiguities, incoherent twists or gaps in the applicant’s account. In many of the children’s cases reviewed, this higher standard was applied because the child was considered accountable for his or her inability to produce a travel or identity document.

In Sweden, the applicant has to substantiate his or her claim to a ‘reasonable possibility’.³² All the written decisions reviewed in the research referred explicitly to this standard when assessing the credibility of elements of the claim. Occasionally – for instance when assessing identity – a higher standard was implied, as in *“you have not proved your identity”*. Generally, however, the approach to the absence of documentation in children’s cases was observed to be flexible.

²⁸ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, para. 2.

²⁹ Austria, AsylGH, 15 June 2009, D11 260.145-0/2008/BE. This approach is articulated by the legislator in explanatory comments to the 1998 Asylum Act (RV 270 Blg NR. XVIII. GP, 13).

³⁰ Netherlands, Aliens Act (2000), Article 31, section 1; IND Work Instruction 2010/14. The instruction uses the Dutch word ‘aanemelijk’.

³¹ Features of such behaviour are (a) having previously applied for a residence permit under a different name; (b) failing to comply with directives under Article 55 of the Aliens Act without a valid reason; (c) not having valid travel documents, unless the applicant immediately reported to an official at the border on entering the country and indicated the intent to apply for asylum; (d) using false or forged travel/identity documents and maintaining that they are authentic; (e) deliberately using false documents in support of the application; (f) failure to submit travel and/or identity documents, unless the applicant can make a plausible case that he or she is not to blame for the absence of documents.

³² Sweden, Judgment of the MCA UM 122-06 of 18 September 2006 (MIG 2006:1); Judgment of the MCA UM 540-06 of 19 March 2007 (MIG 2007:12).



It was also noted that decision-makers did not always make a clear distinction between assessing the credibility of material facts put forward by the asylum-seeker, and assessing the well-foundedness of the applicant's asserted fear. Sometimes these two steps in the status determination process appeared to be conflated.

The threshold for establishing credibility and the contrast between common law and civil law standards of proof is discussed in greater detail in *Beyond Proof*.³³ The present research supports the conclusion reached in *Beyond Proof* that there is a need for a fuller understanding of this issue, as well as a more consistent approach.

³³ UNHCR, *Beyond Proof*, pp. 237–42.

3. What Place does Credibility Assessment have in Decisions on Children's Claims?

Lack of credibility is clearly a major reason for negative decisions in asylum cases, though it is not possible to quantify this more precisely, because determining authorities do not provide statistical data on the reasons underlying their decisions. A number of studies – none of which focused on children – have reviewed first instance decisions and concluded that lack of credibility of the asserted facts was the major reason for negative decisions.³⁴

The present research cannot draw general conclusions about the proportion of children's cases that fail on credibility grounds, as opposed to those in which the decision-maker finds the facts credible but insufficient for a grant of international protection. This is because a purposive sampling method was used in this study, and because the procedures of the four countries of focus are not entirely comparable. In Sweden, for instance, the facts asserted by the applicant are normally first examined to see whether they would, if found credible, meet the criteria for international protection. If so, the facts are assessed for their credibility. If not, the case may be rejected, unless there are specific circumstances to continue examining it.³⁵ Nevertheless, the research suggests that credibility is a key factor in decisions on children's claims, as it is in those of adults.

In 30 of the 124 cases examined, the child was recognized as a refugee. In these cases, it is safe to assume that the child's statements were found credible, at least with regard to the core elements.³⁶ This is confirmed from the examination of written decisions in the two countries (Sweden and Italy) in which positive decisions contain individualized reasoning. Where positive decisions do not contain individualized reasons, as in Austria, the credibility assessment usually consisted of a standard sentence stating that the applicant's statements (and in one case, evidence submitted) are in accordance with the adjudicator's investigations concerning the general situation in the country of origin.

³⁴ UNHCR research in Sweden found that applications were rejected in the first instance on the grounds of insufficient credibility in 38 per cent of cases examined. See Liv Feijen and Emelia Frennmark, *Kvalitet i svensk asylprövning. En studie av Migrationsverkets utredning av och beslut om internationellt skydd* (Quality in the Swedish Asylum Procedure: A study of the Migration Board's Investigation and Decisions on International Protection), UNHCR and the SMB, Stockholm, 2011, p. 131. Other studies include Amnesty International and Still Human Still Here, *A Question of Credibility: Why so Many Initial Asylum Decisions are Overturned on Appeal in the UK*, April 2013; D. Anker, 'Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment', *NYU School of Law Journal of Law and Social Change*, vol. 19, no. 3, 1992; S. Conlan, S. Waters and K. Berg, *Difficult to Believe: The Assessment of Asylum Claims in Ireland*, Irish Refugee Council, 2012.

³⁵ Sweden, MCA, Judgment of the MCA, Case UM-540-06, 19 March 2007 (MIG 2007:12).

³⁶ There may be exceptional situations where refugee status (or subsidiary protection or a national humanitarian status) is granted to all persons of a certain nationality or ethnicity. Sweden's MCA notes that credibility need not be assessed in cases where it is established that a person comes from a certain country or area, and all persons from that country or area are given the right to stay as people in need of protection (MIG 2007:12). There may also be situations, as was observed in one case, where the child is too young (or otherwise unable) to provide evidence, and refugee status is recognized based on objective information about the country of origin (D/141/SOM/F/6).



In 62 of the cases examined, the child was given subsidiary protection or a national humanitarian status. This did not necessarily signal a positive credibility assessment on all or even most of the asserted facts. In some contexts, it is sufficient for an unaccompanied child to establish his or her age, nationality and/or family situation to receive subsidiary protection or a humanitarian status,³⁷ due to the situation in the country of origin³⁸ or the absence of a family network or alternative care structures there in the event of return.³⁹

In the remaining 32 cases in which the decision was entirely negative, lack of credibility featured as a reason in all but one case.⁴⁰

³⁷ Some stakeholders suggested that the existence of a special status for unaccompanied children might discourage a rigorous assessment of the claim. *'My concern is that interviewers who do not have specific competencies do not try to get the maximum from the interview, because they know that there is a system granting some form of protection'* (SH 55); *'It is sometimes easier to evaluate protection needs mainly on the basis of the child's age and related vulnerability, than to gather all the information needed for a comprehensive assessment of the claim. But this may result in granting a lower level of protection than the one actually needed.'* (SH 65)

³⁸ In D/90/MLI/M/17, the child claimed to have been arrested and detained by Tuareg armed militia in Mali. His statements were deemed contradictory and not credible. However, the determining authority found it plausible that he originated from the Kayes region of Mali and, in accordance with instructions from the determining authority, granted him a national humanitarian status based on the general security situation in Mali.

³⁹ For instance, D/004/AFG/M/14, D/012/AFG/M/14; D/17/AFG/M/16, D/018/AFG/M/17, D/024/AFG/M/15.

⁴⁰ In that case it was not possible to gather the facts. Despite the efforts of the interviewer, the 13-year-old only said that he had *'problems with his father'* (D/156/GIN/M/13).

4. Indicators Used for the Assessment of Credibility

The *Beyond Proof* report examined seven indicators and other factors frequently used by decision-makers in the assessment of credibility in the case of adults, and which appear in national guidance. These were detail and specificity; internal consistency of the applicant's oral and written declarations; consistency of the applicant's statements with information provided by family members and/or other witnesses; consistency of the applicant's statements with available 'specific and general information' (namely country-of-origin information and/or information from experts); plausibility; and demeanour and behaviour.⁴¹ With the obvious exception of consistency with information from family members, this research found that the same indicators were used in the determination of claims presented by unaccompanied and separated children.

In the cases reviewed in this research the principal indicators used for the assessment of credibility were the following, listed in the order of frequency of use:

- Sufficiency of detail and specificity;
- Internal consistency of the applicant's declarations;
- Plausibility; and
- Consistency of the applicant's statements with available specific and general information (COI, onsite investigations, other expert information and analysis, including medical age assessments and language analysis).

Other factors which were observed to affect the assessment were:

- Behaviour considered to indicate lack of fear of persecution or risk of serious harm;
- Overall 'coherence' of the story; and
- The child's demeanour.

In the following sections we review the use of these indicators of credibility and other factors.

4.1 Sufficiency of detail

In the cases studied in this research, as in the *Beyond Proof* study, sufficiency of detail was the credibility indicator most frequently used to justify findings, both positive and negative.

The assumption underlying this indicator is that someone who is describing a personal experience will be able to do so in greater detail than someone who is telling an invented story. The decision-maker should nevertheless assess whether the level and nature of detail provided (or expected by the decision-maker) is reasonable in view of the applicant's individual and contextual circumstances – such as age, gender and level of education.⁴² In positive decisions, children who supplied many details when relating their experiences or could answer in-depth questions about their countries of origin were sometimes complimented for doing so, suggesting that decision-makers recognized this as an unusual ability.

⁴¹ UNHCR, *Beyond Proof*, pp. 137–91.

⁴² UNHCR, *Beyond Proof*, p. 138.

National guidelines and case law have highlighted that: “*In general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details*”⁴³ and that “*for both developmental and cultural reasons, children cannot be expected to present testimony with the same degree of precision as adults.*”⁴⁴

Nearly every negative credibility finding reviewed in this research mentioned lack of detail, sometimes without considering of whether the child’s age, gender, educational level or other characteristics could be mitigating factors. Like adults, children were asked ‘general knowledge questions’ in an effort to verify their nationality or ethnic origin. In some cases, these questions did not appear appropriate to the child’s age, gender and level of education. The use of ‘general knowledge’ questions to gather the facts is discussed in Chapter 4.

Two challenges were observed with respect to assessing the sufficiency of detail of testimony provided by children. First, the reasons given by children for seeking protection often related not to their own direct experience, but to experiences of their parents or siblings, about which the child had been told later, sometimes years after the fact. This would obviously affect their ability to relate details, but was not always considered in the assessment.⁴⁵

Second, even where the children related direct experiences, these often took place when they were very young. As discussed in Chapter 3, autobiographical memories of experiences in early childhood, particularly of traumatic experiences, may be especially difficult to recover.

Policy framework on sufficiency of detail

Despite its widespread use as a credibility indicator, sufficiency of detail is not mentioned in the Qualification Directive. It appears in the administrative instructions of two of the four Member States of focus.

No specific mention of the sufficiency of detail was found in internal instructions issued by Austria’s new Federal Office for Immigration and Asylum. In Italy, Guidelines of the National Commission for the Right to Asylum emphasize that some factors may affect the applicant’s capacity to present all available evidence. Mention is made of the effect of trauma, and the impact of the passage of time on memory and the capacity to remember details or to report them in an accurate way. The guidelines further say that the lack of minor details or specific dates, minor inconsistencies or mistakes may be taken into consideration in the credibility assessment, but shall not be determining factors.⁴⁶

In the Netherlands, policy guidance on credibility assessment states that information provided by an asylum-seeker must be ‘plausible, consistent, cohesive and *detailed*’, not ‘vague and summary’.⁴⁷ As explained in *Beyond Proof*, in the Netherlands, the threshold to establish credibility is higher if the asylum-seeker is

⁴³ Immigration and Refugee Board of Canada, *Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* (1996) at B (I) (1). In a case concerning two Sri Lankan children, the Federal Court of Canada held that the first instance panel ‘did not take into consideration the fact that the applicants were ten and twelve years of age when they travelled to Canada and that these two children clearly did not have to keep a log throughout their travels. Furthermore, it was quite possible, and perhaps even likely, that both of the applicants could not precisely remember all of the circumstances of the journey, which must certainly have been very stressful under the circumstances.’ *Uthayakumar v. Canada (Minister of Citizenship and Immigration)*, IMM-2949-98, 18 June 1999

⁴⁴ USCIS, *Guidelines for Children’s Asylum Claims* (1998), at II (e), p. 13 In the case of a child soldier, the US Board of Immigration Appeals pointed out that ‘it would be unreasonable to expect a high degree of detail regarding battle conditions from a young man who was only 15 years old ... and who had been assessed as suffering from post-traumatic stress disorder.’ *Lukwago v. Ashcroft*, 329 F.3d 157 (3d Cir.) 2003.

⁴⁵ A judge noted the following concerning child claimants: ‘their testimony was honest but actually from hearsay. And then the question of credibility doesn’t arise’ (SH 87).

⁴⁶ Italy, National Commission for the Right to Asylum, *Guidelines for the Assessment of Requests for Recognition of Refugee Status*, 2005, p. 55.

⁴⁷ Netherlands IND, Work Instruction 2010/14 on Decision-Making: Assessment of Credibility and Weight (of asylum reasons), paragraph 4.1 (b) and (c).

undocumented; in that case the applicant must be ‘positively persuasive’. In practice, this means that a higher level of detail is expected.⁴⁸ This approach is applied to children as well as to adults.

Guidance issued by the Swedish Migration Board states that decision-makers should examine whether the applicant has provided a ‘concrete and *detailed* story’ or if it is ‘vague and lacking in *detail*’.⁴⁹ However, the SMB makes clear that if an applicant’s statement is considered ‘vague’ or ‘lacking in detail’, this assessment should always be accompanied by an explanation of precisely *what* is vague and *why* it is considered that the applicant should have been able to submit more facts.⁵⁰ Swedish guidance stresses the importance of considering the individual and contextual circumstances of the applicant when assessing the sufficiency of detail:

*“A person who has been subjected to war, violence and serious threats to their person may find it difficult to remember certain details and have problems remembering the sequence of events. Other personal circumstances that can affect the detail of an account are, for example, gender, education, cultural stigma, mental handicap and age.”*⁵¹

Sufficiency of detail and the individual and contextual circumstances of the child

As discussed in Chapter 3, many factors can affect the ability of a child to know about, remember or disclose events. These can include the child’s age at the time of those events, the amount of time that has passed since the events, level of education, gender and sexual orientation, cultural background, shame, fear, traumatic experiences, and mistrust of the authorities, among others.⁵² Italian legislation transposing the Qualification Directive states explicitly that “*when assessing child credibility, due consideration shall be given to the child’s level of maturity and personal development.*”⁵³

In most of the decisions reviewed, sufficiency (or insufficiency) of detail was cited as a reason for a positive or negative credibility finding. Positive findings were usually brief without specification of the details in question. For example, concerning a 12-year-old girl who had been the victim of severe abuse due to her parents’ work as human rights lawyers, the decision stated that “*you have, despite your age, given a detailed, coherent and reliable account.*”⁵⁴

When the applicant was considered to have provided *insufficient* detail, the decision often described the child’s account (or part of it) as ‘vague’, ‘sketchy’ or ‘unclear’ but did not always explain what was missing, or why the authorities thought the child should know this information. The level of detail the authorities sought did not always appear to be reasonable⁵⁵ or to take the child’s individual and contextual circumstances into account.

⁴⁸ Ibid., section 4.1 (c). See also Article 31 (2) Aliens Act (2000).

⁴⁹ Swedish Migration Board, Judicial Position Concerning the Method for Examining Reliability and Credibility, RCI 09/2013, p. 8.

⁵⁰ Ibid., p. 10.

⁵¹ Ibid., p. 7.

⁵² Guidance issued by Canada’s Immigration and Refugee Board notes that ‘*the child may, due to age, gender, cultural background or other circumstances, be unable to present evidence concerning every fact in support of the claim. In these situations, the panel should consider whether it is able to infer the details of the claim from the evidence presented.*’ Immigration and Refugee Board of Canada, *Chairperson’s Guideline 3, Child Refugee Claimants: Procedural and Evidentiary Issues*, 1996, at B (II) (3).

⁵³ Legislative Decree 18/2014, amending Legislative Decree 251/2007, Article 3 (5) (e).

⁵⁴ D/140/SYR/F/12.

⁵⁵ The Federal Court of Canada, remanding a case back to the first instance for rehearing, said: ‘*the panel clearly did not take into consideration the fact that the applicants were ten and twelve years of age when they travelled to Canada and that these two children clearly did not have to keep a log throughout their travels.*’ (*Uthayakumar v. Canada (Minister of Citizenship and Immigration)* [1999] IMM-2949-98, 18 June 2009). A child interviewed by UNHCR in the context of another project made an almost identical comment: ‘*If I had known what they would want to know, I would have taken notes. Really, I will do that next time. Otherwise, no one can remember this and in the moment I did not pay attention to so many things.*’ (UNHCR Austria, UBAUM, p. 21)

Sometimes the fact that the incident in question happened when the child was very young, or was something the child had only been told about, was accepted as a mitigating factor, sometimes not. An 11-year-old boy, who had been accidentally separated from his father during the journey, was unable to explain the reasons behind his (and his father's) departure. The decision-maker considered that no further information or details could be expected from the child, given his young age.⁵⁶

A 16-year-old Afghan who had not been in his country of origin since he was five years old (the family had been living in Iran) was asked what led to his family's flight from Afghanistan eleven years earlier:⁵⁷

Interviewer: *"Do you know what sort of problem they had, somewhat more detailed?"*

Child: *"I don't know so much about that, from what I know, they had problems with the land, they took land from my father who could not do anything so we had to leave."*

The decision reads: *"you have given a very vague account with few details concerning Afghanistan. You cannot give any details about who took the land from your family and why you were forced to leave the country."*

Another child explained that the Taliban had killed his father eight years earlier (when the child was five). When he was nine, his mother told him of the circumstances of his father's death: his father had identified a Taliban at a checkpoint and had therefore himself been killed. The determining authority considered that the child's account was 'sketchy', as he could not give details about who the father had identified, which Taliban had threatened the family, and how his father was killed.⁵⁸

A 16-year-old Afghan who asserted imputed political opinion due to his father's work with foreigners, which had led to the father being killed, was asked:⁵⁹

Interviewer: *"Do you know what work you can have when working for foreigners in Afghanistan?"*

Child: *"I don't know, they don't tell small children this."*

Interviewer: *"For how long had he worked for them?"*

Child: *"Two-three years."*

Interviewer: *"What did he do before?"*

Child: *"I don't know, he just walked to the city of [X], I don't know what he did."*

Interviewer: *"What education did he have?"*

Child: *"I don't know, but I know that he studied."*

Interviewer: *"Where?"*

Child: *"I have not asked."*

Interviewer: *"Do you know if he went to secondary school or to university, and which level?"*

Child: *"I don't know."*

Interviewer: *"What do you think is the reason why they came after your father?"*

Child: *"I don't know."*

Interviewer: *"You have no clue?"*

Child: *"No."*

To support his claim, the child had submitted photos of his father together with the foreigners that the child claimed he worked for. He also explained that his father had not told anyone about his work. Regarding

⁵⁶ D/81/AFG/M/11.

⁵⁷ D/124/AFG/M/16.

⁵⁸ D/126/AFG/M/13.

⁵⁹ D/127/AFG/M/16.

the child's account, the decision-maker considered that: "*You have very little knowledge about your father's occupation. [We] consider this particularly against the background that he was the only person working with foreigners in your home village.*"⁶⁰

In the case of an Afghan girl, age may not have been the only factor affecting her ability to remember. She was uneducated (illiterate), and there was a medical opinion on the file advising the interviewer to approach her with care, and to give her time to formulate her responses. The girl complained during the interview about stomach pain and asked for a break so that she could be by herself. Her claim concerned an arranged marriage, but much of the questioning focused on her father's death when she was 12 years old. Her father died in a road accident involving the truck with which he was transporting wood to market. The decision says that the girl was 'vague' about her father's work: "*The applicant cannot tell who cut the trees, whose truck it was with which the wood was transported, who the driver was who also died, and to whom her father was going to sell the wood*".⁶¹

It is not clear whether the decision-maker considered the girl's lack of education and whether a female child in Afghanistan would have known about her father's work. The details being sought appear peripheral rather than central to the child's claim.⁶² More fundamentally, it can be asked whether any 16-year-old child would be able to answer questions such as these about an event that occurred four years earlier.

This was not the only case in which a child's psychological state was not considered as a mitigating factor. In one case, the child had been assaulted, witnessed family members being attacked and the family's house burned down. He suffered from severe psychological distress and showed signs of suicidal behaviour. In an expert's submission to the determining authorities, the child's mental health problems were outlined and it was emphasized that the child had had difficulties retelling details. Two medical certificates were provided. Without noting the psychological problems of the child, the determining authority considered the child had made 'vague and inconsistent' statements. The case was rejected in the first instance but overturned on appeal; the court noted that the child had 'obvious problems' speaking about his experiences.⁶³

Finally, it was not always clear what additional details the interviewer was seeking or why the information provided was not found to be satisfactory. One case concerned a 17-year-old who claimed that she had been exposed to domestic violence and that her father had threatened to kill her after she married against his will. She was asked:

Interviewer: "*He [father] has subjected you to assault?*"

Child: "*Yes, when I was at home. When he learned that I spent time with this man, I was beaten.*"

Interviewer: "*Did you seek medical attention?*"

Child: "*No, I have not been to any hospital.*"

Interviewer: "*Were you beaten many times?*"

Child: "*Usually when he was out and came home. Maybe he heard something, I don't know. He used to come home and be mad. He shouted at me that he would kill me and that I should disappear so that he didn't have to see me.*"

Interviewer: "*Did he hit you then, or was he just mad?*"

Child: "*Now and then he hit me and screamed at me, I was terrified even to hear his voice. Even after I married, when I heard that he had said something or talked about me, I got scared and shivered.*"

⁶⁰ Ibid.

⁶¹ D/171/AFG/F/16.

⁶² The ability of traumatized children to recall peripheral details is discussed in Chapter 3. Even if the girl had once known this information, she might have been unable to remember it.

⁶³ D/135/RUS/M/17.

There were no further questions about the beatings. Although experts have observed that if an event occurs repeatedly, the accuracy of the recall of each event is diminished and memories tend to become generalized and to be reported with less confidence,⁶⁴ the decision stated: “*You have not been able, in a satisfactory way, to explain on which occasions the beatings took place or how.*”⁶⁵

In summary, the research showed that although decision-makers broadly agree that children cannot be expected to provide the same level of detail as adults, in practice many of the questions they posed revealed high expectations of child claimants. The written decisions did not always take account of factors that might explain a child’s inability to provide detail – age at the time of the events, the fact that the child only heard about the events from others, the child’s gender, level of education and psychological state.

4.2 Internal consistency and coherence

‘Internal’ consistency means consistency in the applicant’s own declarations, whether within a single interview, between multiple interviews, or between oral and written statements. The assumption behind this indicator is that a person who is telling the truth will be able to remember events and facts correctly and to relate them consistently, including on separate occasions. The *Beyond Proof* report explains that this is not necessarily the case.⁶⁶

Psychological research has demonstrated that discrepancies are likely to occur when individuals are interviewed more than once about the same events, and are not necessarily indicative of a lack of credibility.⁶⁷ Moreover, as discussed in Chapter 5, what appear to be inconsistencies between the different interviews of asylum-seekers may in reality be the result of poor interpretation, or a cultural misunderstanding.

The Qualification Directive does not use the term ‘consistency’. Rather, it stipulates that the applicant’s statements should be ‘coherent’.⁶⁸ UNHCR also says that “*credibility is established when the applicant has presented a claim which is coherent.*”⁶⁹ While the meaning of ‘consistency’ appeared clear to decision-makers, ‘coherence’ was a more elusive concept. One adjudicator described ‘coherence’ as “*when it’s like a film, and you can see it.*”⁷⁰

⁶⁴ “When we experience repeated similar events, afterwards we may not only have trouble estimating their frequency, we typically lose the ability to remember individual instances clearly, if at all” (H. Evans Cameron, ‘Refugee Status Determination and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, pp. 469–511 at p. 481.

⁶⁵ D/122/RUS/F/17.

⁶⁶ UNHCR, *Beyond Proof*, p. 149.

⁶⁷ J. Herlihy, P. Scragg and S. Turner, ‘Discrepancies in Autobiographical Memories – Implications for the Assessment of Asylum Seekers: Repeated Interviews Study’, *British Medical Journal*, vol. 324, no. 7333, 2002, pp.324–7.

⁶⁸ Qualification Directive (recast), Article 4 (5) (c).

⁶⁹ UNHCR, Note on the Burden and Standard of Proof in Asylum Claims, 16 December 1998, para. 11.

⁷⁰ SH 03. The Netherlands IND’s Work Instruction 2010/14 calls this ‘causal connection’. That Instruction (p. 6) says: ‘Insofar as the alien makes declarations about a number of events, assumptions or facts which he asserts are related to each other, it needs to be assessed if he can make credible the causal connection among these elements. It should be assessed if the alien can relate these events, assumptions and facts to each other in a convincing manner, so that one follows logically from the other.’

Policy guidance on internal consistency and coherence

Internal consistency is clearly identified as an indicator of credibility in policy guidance of three of the four Member States of focus in this research. Two also refer to coherence as an indicator.

Guidelines issued by Italy's National Commission cite the “*overall internal consistency and coherence*” of the applicant's statements as an indicator.⁷¹ In the Netherlands, the requirements of consistency and coherence are contained in Work Instruction 2010/14. The applicant's declarations (in particular when he or she is undocumented) need to be ‘consistent, cohesive and detailed’.⁷²

The Swedish Migration Board identifies internal consistency as an important indicator of credibility. The SMB makes two important points in this context: when a case owner notices inconsistencies, he or she must give the applicant a chance – preferably at an oral hearing – to explain the discrepancy and, secondly, if inconsistencies are held against the applicant, these should concern *central*, not peripheral, issues.⁷³

Internal consistency, coherence and individual and contextual circumstances

Internal consistency was key to the assessment of credibility in the cases reviewed in this research. It was used in both positive and negative findings, often linked to the notion of coherence and to other indicators, such as the sufficiency of detail. It concerned consistency between initial and subsequent interviews as well as between written statements and interviews.

Positive credibility findings came in formulations such as: “*The [determining authority] finds that you, with consideration to your age and maturity, have given a coherent account without internal inconsistencies.*”⁷⁴ Or, as in another case, “*in terms of credibility assessment, the applicant was generally coherent ... in so far as, still underage at the time of the assessment, the applicant related events that occurred when he was 13 and 14 years old.*”⁷⁵

Negative credibility findings were frequently based at least in part on discrepancies between initial questioning by police and the subsequent substantive asylum interview.⁷⁶ This was of concern for several reasons: children interviewed immediately upon arrival may be tired, hungry and confused; questioning is not always child appropriate and is sometimes done by uniformed police officers; there is not always a legal representative, guardian or qualified interpreter present; and other procedural safeguards may be lacking.⁷⁷ National jurisprudence has pointed to the limited purpose of initial interrogations of applicants by police, and to the need to protect the asylum-seeking child from having to relate traumatic experiences in detail to uniformed state officials immediately on arrival.⁷⁸ National jurisprudence has also made clear that there can be consequences if information is collected in initial interviews where the child is not informed about the process or assisted by counsel.⁷⁹

⁷¹ Italy, National Commission for the Right to Asylum, *Guidelines for the Assessment of Requests for Recognition of Refugee Status* (2005), p. 56.

⁷² Netherlands IND, Work Instruction 2010/14, p. 4.

⁷³ SMB, Judicial Position concerning the method for examining reliability and credibility, RCI 09/2013 (10 June 2013), p. 9.

⁷⁴ D/132/SOM/M/14, D/140/SYR/F/12.

⁷⁵ D/60/ERI/M/16.

⁷⁶ For instance, in one of the four countries of focus, the credibility assessment was based on inconsistency between the initial interrogation by the police and the substantive asylum interview in twelve out of 30 cases, and inconsistencies within the asylum interview in ten out of 30 cases.

⁷⁷ SH10, SH 11, SH 83.

⁷⁸ Austria, Constitutional Court (VfGH), U 98/12, 27 June 2012, U 1919/2013–15 and U 1921/2013–16, 20 February 2014.

⁷⁹ District Court of The Hague, AWB 13/12062, 4 June 2013.

Children, like adults, should always be given the opportunity to explain or clarify any inconsistencies or other potentially adverse credibility findings.⁸⁰ The reasonableness of the explanations provided should be taken into account in making a finding in relation to an asserted material fact. For instance, an Afghan girl had stated at one interview that she was present at her father's funeral, and at another interview that she was not present. When invited to clarify this, she explained that she had meant that she was present during the ceremony at home, but not when the body was interred.⁸¹ The apparent discrepancy may have arisen from how the word 'funeral' was translated into the child's language at these interviews, and how the child interpreted the term that the interpreter used.

In another case, a 15-year-old Afghan boy was unable to explain many inconsistencies that were central to his claim. These concerned discrepancies between statements made to a social worker and at the asylum interview about whether the child witnessed his father's killing; about whether the Taliban had come to the family's house; and about whether the family received night-time letters before or after the killing of his father. After confirming that in the case of a child claimant the requirements are indeed lower than in the case of an adult, the authority considered that the cumulative inconsistencies were nevertheless too serious. Considering all the evidence, the child's claim was found not credible and was refused.⁸²

4.3 Plausibility

The *Beyond Proof* report explains that it is problematic to use 'plausibility' to assess credibility in a cross-cultural context.⁸³ A determination of 'plausibility' lacks clarity and objectivity; what is plausible to one person might not be to another. The assumptions on which a notion of plausibility rests inevitably derive from the personal and cultural experiences of the decision-maker in question, which may be worlds away from those of the asylum-seeker. Also, given the variation in the ways that different societies construct childhood, such caution is particularly pertinent when it comes to assessing children's claims.

Nonetheless, the Qualification Directive includes 'plausibility' as an indicator of credibility: The applicant's statements can be accepted if they are found to be 'coherent and *plausible*' (emphasis added).⁸⁴ UNHCR's *Handbook*⁸⁵ and *Note on the Burden and Standard of Proof*⁸⁶ use similar language.

What does plausibility mean? The EAC explains that assessments of plausibility must be based on 'reasonably drawn, objectively justifiable inferences'. The facts alleged by the applicant should be 'plausible' means that the facts should be 'believable and consistent'. The EAC cautions decision-makers: "*You must never make adverse credibility findings by constructing your own theory of how ... you think the applicant, or a third party, ought to have behaved.*"⁸⁷ Clearly, cultural sensitivity, attention to the applicant's individual circumstances and accurate information about the situation in the country of origin are prerequisites for an assessment of plausibility.⁸⁸

⁸⁰ *Asylum Procedures Directive (recast)*, Article 16, provides that the applicant shall be given an opportunity to give an explanation regarding any inconsistencies or contradictions in his or her statements.

⁸¹ D/171/AFG/F/16.

⁸² D/131/AFG/M/15.

⁸³ UNHCR, *Beyond Proof*, pp. 176–184.

⁸⁴ *Qualification Directive (recast)*. Article 4 (5) (c) reads: 'where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation' if the statements are found to be 'coherent and plausible' and 'do not run counter to available specific and general information relevant to the applicant's case'.

⁸⁵ UNHCR *Handbook*, para. 204.

⁸⁶ UNHCR *Note on Burden and Standard of Proof*, para. 11.

⁸⁷ EASO Training module 7, *Evidence Assessment*, Unit 3.2.

⁸⁸ 'Great caution is to be used when applying European standards to African circumstances' (Austria, Higher Administrative Court, VwGH 2000/01/0521, 2 October 2001).

Policy guidance on plausibility

Italian legislation and policy guidance mirror the language ('coherent and *plausible*') of the Qualification Directive.⁸⁹ Policy guidance in the Netherlands similarly stipulates that "*the applicant's statements need to be plausible, consistent, coherent and detailed.*"⁹⁰

The Swedish Migration Board's Judicial Position on reliability and credibility does not mention 'plausibility' as an indicator and urges decision-makers to be wary of subjective assessments:

*"The method for evidence evaluation can never be based on subjectivity, arbitrariness and intuition. The method must in every individual case be based on rational, objective grounds. Since in asylum cases it is necessary to examine events that occurred in other countries, it is also important, when conducting assessments, to have a good knowledge of these countries so that it is possible to place oneself in the situation in the other country and not to presuppose those authorities and other parties act in the same way as in a state governed by law."*⁹¹

Plausibility and the decision-maker's assumptions

Notwithstanding the problems associated with 'plausibility' as an indicator of credibility, it was frequently used in the cases examined in this research, sometimes expressed through substitute language such as 'remarkable', 'strange', 'unlikely' or 'questionable'. In other words, the risk identified in *Beyond Proof* of credibility assessments being based at least in part on a decision-maker's subjective assumptions and speculation was also found in children's cases.

The assumptions concerned what the decision-maker thought the child should have known, or how the decision-maker thought that the child would or should have behaved, and were not always explained with reference to the child's individual and contextual circumstances.

- In the case of a 17-year-old Somali girl: "*the State Secretary finds it remarkable that [she] cannot give more information about the city of her birth, and does not know when she came to live in the city district of Hamar Weyne in Mogadishu.*"⁹² However, the girl was documented as being developmentally delayed and had lived a very isolated life in Somalia, facts that might explain her lack of knowledge;
- In the case of an Afghan girl who claimed to have been forcibly married to a much older man, the determining authority found it 'remarkable' that she could not give his full name. The explanation offered by the girl's legal counsel that the name given at the asylum interview was the man's nickname, and that the girl did not want to think about him anymore, was not accepted, but without explanation.⁹³
- In the case of an Afghan boy whose father was killed by the Taliban allegedly because he worked for foreigners, the determining authority considered it 'remarkable' that the child had not reflected on the dangers his father faced because of his work, even though the boy was quite young at the time.⁹⁴
- It was considered not plausible (without further explanation) that a 12-year-old Afghan girl would have dared to tell her father she did not want to marry the man to whom he had promised her.⁹⁵

⁸⁹ Italy, Legislative Decree 251/2007 as modified by Legislative Decree 18/2014, Article 5 (c); National Commission for the Right to Asylum, *Guidelines for the Assessment of Requests for Recognition of Refugee Status*, p. 56.

⁹⁰ IND Working Instruction 2010/14 p. 4. The Dutch word for plausible is 'aannemelijk'.

⁹¹ Judicial Position concerning the method for examining reliability and credibility, RCI 09/2013 (10 June 2013), p. 7. The Judicial Position uses the word *reasonable*: an applicant's statements are to be taken into account if they are '*reasonable, probable and/or are supported by existing country-of-origin information.*'

⁹² Council of State, Administrative Division, 201209264/1/VI, 4 September 2013.

⁹³ D/121/AFG/F/17.

⁹⁴ D/127/AFG/M/16.

⁹⁵ D/171/AFG/F/16.

Sometimes facts asserted by the child were considered to be implausible without reference to country-of-origin or other factual information to back up this conclusion.⁹⁶ For instance:

- A Chechen girl stated that her father was about to arrange her marriage against her will. The determining authority expressed doubt about this because she did not know when the marriage was to take place and had little knowledge about her future husband. No reference was made to information about the practice of forced marriage in Chechnya.⁹⁷
- In the case of a boy who claimed to have had a relationship with a girl who reportedly had told him 25 days after intercourse that she was pregnant, the determining authority considered it ‘unlikely’ for anyone to know after just 25 days that she was pregnant.⁹⁸

It is not clear that these examples of plausibility assessment meet the standard set by EAC of being ‘reasonably drawn’ and ‘objectively justifiable.’⁹⁹

To summarize, lack of plausibility of an asserted fact should not alone be determinative of credibility. As explained in *Beyond Proof*, if plausibility is used as an indicator, it is important this be with reference to the entirety of the evidence and together with other indicators.¹⁰⁰ It was encouraging to note that in the cases reviewed in this research, lack of plausibility alone rarely sufficed to rule out credibility. It was often used along with indicators such as detail and internal consistency. However, it was less often used together with an assessment of consistency with country-of-origin information, although this would appear particularly important for the assessment of plausibility.

4.4 Consistency with country-of-origin information

This indicator is set out in the *Qualification Directive*. To be credible, the applicant’s statements should “*not run counter to available specific and general information relevant to the applicant’s case*” (emphasis added).¹⁰¹ Decision-makers responsible for children’s claims therefore should have access to child-specific country-of-origin information when assessing credibility.

Several studies on the use of country-of-origin information have noted that it is often very generic, and that child-specific information may not be available.¹⁰² The EAC cautions decision-makers that the absence of corroborative information does not necessarily mean that a claimed event did not occur.¹⁰³

⁹⁶ D/116/AFG/M/16, D/121/AFG/F/17, D/122/RUS/F/17, D/125/SOM/F/15, D/127/AFG/M/16, D/128/DZA/M/17, D/129/AFG/M/16, D/131/AFG/M/15, D/136/IRN/M/17, D/174/PAL/M/16.

⁹⁷ D/122/RUS/F/17.

⁹⁸ D/136/IRN/M/17. Many home pregnancy test kits advertise that they can detect a pregnancy two weeks after conception; some claim to be able to do so even earlier.

⁹⁹ EASO Training module 7, *Evidence Assessment*, Unit 3.2.

¹⁰⁰ UNHCR, *Beyond Proof*, p. 184.

¹⁰¹ *Qualification Directive*, Article 4 (5) (c). UNHCR’s *Handbook* says that the applicant’s account must not run counter to ‘generally known facts’ (para. 204). UNHCR’s *Note on the Burden and Standard of Proof in Refugee Claims* (16 December 1998), says that the adjudicator, in assessing the credibility of a claim, should take into account its consistency with common knowledge or generally known facts, and the known situation in the country of origin (para. 11).

¹⁰² The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) stresses the need for child-specific COI, noting that information is often ‘too generic or not available’ (*ACCORD COI Network and Training. Researching Country of Origin Information: A Training Manual*, April 2006, p. 28). The Independent Chief Inspector of the UK Border Agency has noted that there may be a lack of information for ‘low intake’ countries or for groups such as minors (*The Use of Country-of-origin Information in Deciding Asylum Applications: A Thematic inspection, October 2010–May 2011*, section 5.4). For a detailed review of child-specific information in UK Home Office reports, see R. Kohli, F. Mitchell and H. Connolly, ‘An Analysis of the Coverage of Issues Related to Children in Country of Origin Reports Produced by the Home Office’, Prepared for the Independent Advisory Group on Country Information, October 2012.

¹⁰³ EASO Training module 7, *Evidence Assessment*, Unit 3.2.

Policy guidance on the use of country-of-origin information to assess credibility

Policy guidance in the four countries of focus generally reflects the *Qualification Directive*'s requirement that the applicant's statements be consistent with what is known about circumstances in the country of origin.

In Austria, the act establishing the Federal Office for Immigration and Asylum¹⁰⁴ provides that the Federal Office shall maintain an official documentation service responsible for collecting facts relevant to the credibility assessment as well as for the assessment of the well-foundedness of the applicant's claimed fear.

In Italy, the guidelines of the National Commission stipulate that in determining the credibility of the application, decision-makers should take into account (among other factors) what is known about the situation in the country of origin and the consistency of the applicant's statements with common knowledge and generally known facts.¹⁰⁵

Guidance in the Netherlands provides that if an applicant's statement is not consistent with 'authoritative sources', this is a strong reason to conclude it is not credible.¹⁰⁶ Official reports prepared by the Ministry of Foreign Affairs are considered 'authoritative sources', among others.

In Sweden, decision-makers should assess whether publicly known facts and relevant country information support the claim, or whether such sources contradict it.¹⁰⁷

Use of COI in connection with credibility assessment in children's cases

Country-of-origin information was widely referenced in the cases examined in this research. In three countries, COI was referred to (or reproduced) in nearly all the decisions reviewed. In some cases, the references were extensive (40 pages or more). In one country, however, half the decisions reviewed did not make any reference to country-of-origin information.

In all the countries of focus, it was noted that the referenced information was frequently not child specific, and was seldom used to assess the credibility of specific material facts. Where child-specific COI was referenced, it was often used to assess the future risk (the analysis of well-founded fear or real risk of serious harm). That assessment frequently related to conditions of reception in the event of the compulsory return of the child, rather than to the elements of the child's claim.¹⁰⁸

In the two countries that provide written reasons for both positive and negative decisions, the cases reviewed suggest that COI is used more frequently in support of positive credibility findings than negative ones, but the references were usually brief and non-specific, such as: "*Due to investigations on the general situation in your country in combination with your statements, the claimed fear of persecution could be rated as credible.*"¹⁰⁹

¹⁰⁴ Act establishing the Federal Office for Immigration and Asylum, Article 5, para. 1.

¹⁰⁵ Italy, National Commission for the Right to Asylum, *Guidelines for the Assessment of Requests for Recognition of Refugee Status*, p. 56.

¹⁰⁶ Netherlands IND, Work Instruction 2010/14, para. 4.1 (c) and (d).

¹⁰⁷ SMB, Judicial Position concerning the method for examining reliability and credibility, RCI 09/2013 (10 June 2013), p. 8 and p. 10.

¹⁰⁸ This focus reflects *Returns Directive*, which provides that an unaccompanied child whose protection application has been refused may be sent back to the country of origin if the child can be returned to a member of his or her family, to a nominated guardian, or to 'adequate reception facilities' (Article 10). The country-of-origin information unit of one of the countries of focus reported that the most common requests from case managers concern orphanages and the possibilities of family tracing in countries of origin (e-mail message of 10 March 2014).

¹⁰⁹ D/06/SYR/M/17.

Good practice was noted when positive decisions made a specific connection between COI and the child's claim. For instance:

The applicant's statements are ... consistent with the COI on Nigeria that confirms that homosexuality is indeed condemned by society and severely punished by law with 14 years' imprisonment.¹¹⁰

You have given a detailed and coherent asylum account. Apparent from your account is that you have been wanted by the regime due to your participation in demonstrations as well as the armed attack in which you participated. Evident in the COI cited above is that the regime targets all sorts of outspoken opposition which [the determining authority] considers your action an example of.¹¹¹

In another good practice example, the interviewer used research into the Yezidi religion to verify an Iraqi girl's claim.¹¹²

Interviewer: "Are you baptized as a Yezidi?"

Child: "What is that?"

[The interviewer explains that from the sources he has consulted, it appears that children are baptized at a young age with holy water from Lalish.]

Child: "Yes, that is correct. Every child who is born is taken to Lalish, and there is a source, which is called the Kaniya spi, the white water source. The water is sprinkled over the child's face. They also let it drink the water."

Inconsistency with COI did not appear frequently as a reason for a negative credibility finding. For the most part, negative assessments were based on other indicators, such as internal inconsistencies, lack of sufficient detail or lack of plausibility, without verifying specific issues against available COI. For instance, a Pakistani boy had claimed that the death of another youth was announced through the loudspeakers of mosques. The decision-maker found this statement 'remarkable' (that is implausible) but did not cite any COI to indicate that such a practice does not occur.¹¹³ Research into cultural practices might have clarified the case of a boy from Ghana who said that after his mother's death he was no longer welcome in his stepfather's house. This was not believed, although there was no indication that the decision-maker sought to ascertain whether this was a cultural practice, a practice specific to the boy's family, or a fabrication.¹¹⁴

Some decisions did not make any reference to COI when accepting or rejecting the credibility of an asserted material fact, including cases involving child-specific forms of persecution such as the risk of being used as a 'dancing boy' (*Bachi Bazi*) in Afghanistan¹¹⁵ or forced marriage. A 15-year girl from Somalia claimed that she risked a forced marriage; the determining authority dismissed this without any reference to COI, stating that "there is no general risk of being forcibly married in Somalia."¹¹⁶

Where country-of-origin information was found to carry more weight than the child's statements, it would be important for the decision to specify precisely what the inconsistency with COI concerned, and why the child's statements were not found credible. Lack of credibility of a claim due to its variance with the authority's assessment of the situation in the country of origin was sometimes reasoned generically, for instance: "Finally, you were not able to refute the [determining authority's] conclusions regarding your country

¹¹⁰ IV/62/NGA/M/19.

¹¹¹ D/38/SYR/M/17.

¹¹² D/172/IRAQ/F/17.

¹¹³ D/174/PAK/M/16.

¹¹⁴ D/64/GHA/M/17.

¹¹⁵ D/117/SOM/M/16, D/120/SOM/M/16, D/123/AFG/M/16, D/124/AFG/M/16, D/129/AFG/M/16.

¹¹⁶ D/125/SOM/F/15.

*of origin, because these are based on various, international, objective sources and are therefore to be given more credibility from an objective perspective than your statements.”*¹¹⁷

As mentioned in Chapter 4, in a small number of cases, onsite investigations in the child’s country of origin were undertaken (in Afghanistan and in Pakistan). These investigations were given considerable weight in the credibility assessment: *“in this case the [determining authority] deems your statements to be untrue, because onsite investigations in your country uncovered these as untrue.”*¹¹⁸

Although the applicants had a chance to comment on the findings, they were not told how the authorities conducted these investigations, and it was unclear to what extent the explanations that the applicants provided were individually examined.

Several cases presented inappropriate use of COI. In one instance, the legal counsel presented COI to *corroborate* a child’s statement concerning the risk arising from his father’s work with foreigners in Afghanistan, while the determining authority used the same information to support a negative credibility finding:

*“[The determining authority] refers to the COI presented in the case ... from which it is evident that all persons who work with foreigners risk to become targets for the Taliban. According to the same report, it is highly likely that the Taliban threatens these people. The [determining authority] therefore finds it remarkable that you have never reflected about your father’s work and possible danger, this even with consideration to your young age.”*¹¹⁹

In another case, COI referenced on the file appeared not to have been properly applied. The case concerned a 17-year-old Afghan girl who claimed that she had been forcibly married, then raped and threatened by her husband. The determining authority questioned her credibility because she had not reported the abuse to the local police, even though COI on the file indicated that women who report abuse in Afghanistan face a risk of being mistreated by law enforcement personnel.¹²⁰

In summary, there would appear to be scope for the further development and use of child-specific COI in the context of a credibility assessment. The Qualification Directive requires the decision-maker to assess the applicant’s credibility against information relevant to the applicant’s case, but the availability of child-specific information differs from one country of origin to another.¹²¹ It is encouraging that there are several projects underway that focus on the development and use of child-specific country-of-origin information.¹²²

¹¹⁷ D/025/DZA/M/15.

¹¹⁸ D/010/PAK/M/16. Also, D/11/AFG/M/16, D/026/AFG/F/17.

¹¹⁹ D/127/AFG/M/16.

¹²⁰ D/121/AFG/F/17.

¹²¹ Amnesty International has observed that credibility is more likely to be challenged if an applicant comes from a country for which COI is scarce. *Get it Right: How the Home Office Decision-Making Process Fails Refugees* (Amnesty International UK, February 2004), p. 19.

¹²² A two-year project (2013–2015) implemented by the UNICEF National Committees in Belgium, the Netherlands and Sweden, funded by the European Commission, aims (*inter alia*) to improve the gathering of child-specific information from countries of origin. (Project description provided by project partners.)

4.5 The impact on credibility assessment of expert evidence about age

A detailed examination of the use (and methodology) of age assessment procedures is beyond the scope of this study.¹²³ The subject nevertheless merits attention because, as observed in numerous cases in this research, when the adjudicator has doubts about a child's claimed age, this can have a considerable impact on the credibility assessment.

Some adjudicators communicated their doubts about the applicant's claimed age directly to the child, even in the absence of a medical age assessment:

*"We have been talking for a while now. If I look at you, talk to you, look at you and observe your behaviour, I have doubts if you are really 16 years old... the way you react does not correspond with a person under age. And this, together with your looks, which I mentioned, is the reason not to accept that you are under age."*¹²⁴

An Afghan boy claimed to be 13 years old. The interviewer said: *"I have doubts about this. I think that you are certainly 15, 16 if not 17 years old."*¹²⁵ In another case the interviewer commented: *"You look older than you claim to be. Also your behaviour and self-confident attitude indicate an older age."*¹²⁶

As indicated earlier, in some instances, the determining authorities 'adjust' the child's age without a formal age assessment. More frequently, however, they offer the child a medical age assessment.¹²⁷ The age assessment is not compulsory, and a child's refusal to undergo the assessment cannot be the sole basis for refusal of an application.¹²⁸ Refusal may nevertheless have a negative impact on the assessment of the child's general credibility. An official from a determining authority explained:

*"Since the [age assessment] examination is unproblematic and in no way dangerous and throughout Europe we pursue one of the best systems towards which other states orient themselves, there is actually no reason not to participate. That means if someone does not participate, then I have the suspicion myself that something is not right with the age."*¹²⁹

However, it is important to take the child's individual circumstances into account and to seek to understand the possible reasons for a lack of cooperation with age assessment procedures. Children may be concerned about certain aspects of the procedure, in particular about the physical examination of their genitals.

When an age assessment concluded that the child was older than he or she had claimed, this was observed to have a negative effect on the child's general credibility.¹³⁰ In the following example, the decision-maker doubts that he can rely on other statements made by the child:

¹²³ There is a vast literature on age assessment. The European Asylum Support Office survey entitled *'Age Assessment Practice in Europe'* (December 2013) examines methods for assessing age as well as the use of age assessments in asylum decision-making, and contains an extensive bibliography.

¹²⁴ D/170/AFG/M/15.

¹²⁵ D/173/AFG/M/13.

¹²⁶ D/026/AFG/F/17. This case also highlights that when a child's age is judged by his or her appearance, opinions can differ. At the time of the admission procedure, officials considered the girl's claimed age to be credible and therefore did not commission a medical age assessment.

¹²⁷ *Asylum Procedures Directive (recast)* Article 25 (5).

¹²⁸ *Ibid.*, Article 25 (5) (c).

¹²⁹ SH 89.

¹³⁰ *'The untrue statements of the applicant concerning his date of birth clearly show that he is personally non-credible'* (Austria, Asylum Court (AsylGH) S3 405.079-1/2009, 9 September 2009).

“The insufficient reliability of the applicant can be deduced from the fact that he, on arrival in [the country] and when applying for asylum, has declared a date of birth with the aim to be considered as minor, rectifying such a date during the asylum interview due to the results of the age assessment.”¹³¹

In other words, adjudicators may conclude that if a child lies about his or her age, he or she will be inclined to lie about other issues as well:

“You obviously ... made untrue statements concerning your age, which is a further indication that you do not want tell the truth, but rather construct your statements as it suits you, and this apparent willingness to tell falsehoods is to be determined regarding your statements on your flight grounds as well.”¹³²

Decision-makers should take care not to allow a negative credibility finding concerning the applicant's assertions about his or her age to influence the assessment of other elements of the claim, since credibility assessment should focus on the material elements of the claim.¹³³ In the cases reviewed in this research, discrepancies between claimed age and assessed age were not alone sufficient to undermine a claimant's 'general credibility', but were certainly a contributing factor.

4.6 Behaviour, demeanour and the 'general credibility of the applicant'

In *Beyond Proof* it was observed that determining authorities frequently appraise the 'general credibility' of an applicant based on the individual's behaviour, meaning his or her actions or inaction, or based on his or her demeanour, meaning the person's bearing, attitude or manner – in short, how the person looks to someone else. The same observation emerged from this research.

Even though credibility indicators should be used to assess relevant facts,¹³⁴ one stakeholder noted that *“sometimes the idea of a credible person, as a synonym of a trustworthy person, prevails and diverts the credibility assessment, although the latter should not concern the person, but his or her statements.”¹³⁵*

The Qualification Directive refers to the need to establish the 'general credibility' of the applicant, without explaining precisely what this consists of.¹³⁶ The EASO training module on evidence assessment uses the term 'personal credibility' as well as 'general credibility'. Neither term is defined, but the module explains that when assessing 'general credibility' the decision-maker *“will take into account the (positive/negative) credibility findings he made when assessing other material facts.”¹³⁷* This appears in line with UNHCR's *Handbook*, which links the 'general credibility of the applicant' to the overall assessment of the applicant's statements.¹³⁸

The EASO training module on evidence assessment clearly states that demeanour should not be used as a credibility indicator: *“Demeanour cannot be taken as an indicator of (lack of) credibility, particularly in the*

¹³¹ D/092/SEN/M/18.

¹³² D/009/SOM/M/18.

¹³³ SH 88: 'Other factors also count. [Age] is not central in the credibility assessment.'

¹³⁴ The UNHCR *Handbook* (para. 195) describes the task of the determining authority as being to assess 'the credibility of the applicant's statements'.

¹³⁵ SH 55.

¹³⁶ *Qualification Directive (recast)*, Article 4 (5) (e).

¹³⁷ EASO Module 7, *Evidence assessment*, Unit 3.1, point 8.

¹³⁸ UNHCR *Handbook*, para. 203.

*asylum context where cultural differences and the effects of trauma make it difficult to ‘read’ non-verbal signals accurately. It is made even more difficult because of the use of an interpreter.”*¹³⁹

In contrast, the EASO considers that the applicant’s *behaviour* can damage his or her ‘personal credibility’, and provides a list of potentially damaging behaviour¹⁴⁰ based on the optional grounds set out in Article 31 of the Asylum Procedures Directive for accelerating the examination of (an adult’s) asylum application.¹⁴¹ UNHCR discourages this approach, as Article 31 of the Asylum Procedures Directive does not provide a legal basis for factors to be used when assessing credibility of an applicant’s statements.

Policy guidance on behaviour

Policy guidance in the countries of focus links the applicant’s behaviour to the credibility assessment to varying degrees. The focus is on behaviour in the country of prospective asylum.

In Italy, neither the applicable law nor the National Commission’s Guidelines mention the applicant’s behaviour as an indicator of credibility, whereas law in Austria and the Netherlands stipulates that an applicant’s failure to comply with the various elements of the duty to cooperate in the asylum procedure is to be taken into account in the credibility assessment.¹⁴² In the Netherlands, as discussed earlier, the Aliens Act sets out six actions that have the potential to taint credibility. If any one of these circumstances is present, the applicant must be more persuasive than would otherwise be the case.¹⁴³

In Sweden, policy guidance provides that attention should be paid to ‘the applicant’s actions in general’ as long as these can be assessed objectively. It cites examples such as not seeking asylum until encountering the police or not giving a reasonable explanation for the delay. Other examples are making multiple asylum applications, or not answering questions that are asked repeatedly.¹⁴⁴

Observations regarding behaviour as an indicator of ‘general credibility’

The *Beyond Proof* research noted that determining authorities frequently consider certain types of behaviour to indicate a lack of ‘general credibility’ in the case of adults. That report pointed out that using behaviour to assess credibility may be problematic, given that some of the actions determining authorities consider to undermine credibility, such as the use of false documents, may be precisely the type of action to which a person in need of international protection has to resort. Considerable caution is therefore needed when using an individual’s behaviour to assess his or her ‘general credibility’.

¹³⁹ EASO Training module 7, *Evidence assessment*, Unit 4.2. This guidance is tempered by subsequent statements in the module, such as: ‘*Demeanour can only be used if objectively explained in the decision and it can only be one of several other indicators of (lack of) credibility.*’

¹⁴⁰ EASO Training module 7, *Evidence assessment*, Unit 4.1. The module cites such behaviour as submitting false documents, delay in claiming asylum, and failure to claim asylum in the first ‘safe’ country the applicant reaches. The EASO also suggests that when an individual has a criminal record or a history of deceit, this may affect his ‘personal credibility’. The legal basis for this is unclear.

¹⁴¹ *Asylum Procedures Directive (recast)*, Article 31 (8).

¹⁴² Austria, Asylum Act (2005) amended, Article 18, para 3. The various elements of the duty to cooperate are set out in Article 15, para. 1.

¹⁴³ Netherlands, Aliens Act 2000, Article 31 (2) (a-f). Such behaviour consists of (a) having previously applied for a residence permit under a different name; (b) not having complied with directives under Article 55 of the Aliens Act without a valid reason; (c) not having valid travel documents, unless the applicant immediately reported to an official at the border on entering the country and indicated the intent to apply for asylum; (d) using false or forged travel/identity documents and maintaining that they are authentic; (e) deliberately using false documents in support of the application; (f) failure to submit travel and/or identity documents, unless the applicant can make a plausible case that he or she is not to blame for the absence of documents.

¹⁴⁴ Swedish Migration Board, Judicial Position concerning the method for establishing reliability and credibility, RCI 09/2013 (10 June 2013), p. 3.

It was observed in children's cases, as in those of adults, that determining authorities sometimes consider certain types of behaviour as signalling a propensity for deceit or dishonesty.¹⁴⁵ This concerned such actions as submitting false documents and maintaining they were valid, applying for asylum under different identities in different countries, destroying or disposing of travel or identity documents, or refusing to submit a cell phone for examination.

Other behaviour, such as a delay in leaving the country of origin or in applying for asylum after arrival, or failing to appear for interview, was sometimes also cited as indicative of a child's lack of 'general credibility', although it would appear more relevant to the second phase of the examination of the claim, namely the assessment of whether the child had a well-founded fear of persecution or serious harm. Given that it is rarely the child who decides when and how he or she will leave the country of origin, particular care needs to be taken in linking delayed departure to the credibility of a child's assertions – or to the well-foundedness of the child's fear.

Delay in applying for asylum after arrival in the Member State influenced the assessment of the child's 'general credibility' to varying degrees. Practice seemed inconsistent both within and between countries. In one country, applications made two years after arrival had no effect on the assessment of general or personal credibility,¹⁴⁶ although in the same country a child's prompt application was cited as an element supporting a positive assessment.¹⁴⁷ In another country, a two-day delay in applying for asylum was seen as a negative indicator; the decision suspected the child of using this time to be 'coached' in what to say.¹⁴⁸

A variety of factors may influence children's access to the procedure, including prompt and age-appropriate information, mental and physical health, the availability of assistance, and the appointment of the guardian. One official specified that any question she would ask concerning the timing of a child's asylum application would be aimed solely at understanding the structural and other shortcomings that might delay a child's access to the procedure.¹⁴⁹

Although the impact of delayed applications for asylum varied, not appearing for interviews or other procedures consistently appeared to have a negative impact on the assessment of the child's 'general credibility' and/or of the well-foundedness of the alleged fear. Regarding missing an interview, it was written in a decision of a 16-year-old girl:

*"That you let the interview appointment ... go unused and without stating any reasons ... lets the authority come to the conclusion that you are not interested in cooperation and the result of your asylum procedure, because every reasonable person who knows of a further possibility to describe his flight grounds thoroughly and concretely in order to be granted refugee status due to well-founded fear of persecution, would not let this chance go unused."*¹⁵⁰

Concerning a child who had absconded during the asylum procedure (and was still missing at the time of the decision) the decision stated that *"the [determining authority] initially notes that you, at the moment, have absconded from the asylum procedure. The [authority] considers that your action indicates that you are not particularly serious about your need for protection."*¹⁵¹

¹⁴⁵ In one country of focus, the behaviour of a child appeared as a negative credibility indicator in 6 of 23 decisions that were partly or entirely negative. In another country, it appeared in 5 of 30 partly or fully negative decisions.

¹⁴⁶ D/52/SEN/M/17; D/53/SEN/M/17.

¹⁴⁷ D/66/ALB/M/17.

¹⁴⁸ D/026/AFG/F/17.

¹⁴⁹ SH 65.

¹⁵⁰ D/003/MKD/F/16. In this case the child's lawyer confirmed that he had informed the child of the appointment.

¹⁵¹ D/128/DZA/M/17.

In this particular case, the conclusion appeared reasonable. However, this indicator would need to be used with great caution, in view of the large number of children who ‘disappear’ from reception centres across Europe and the widespread concern this has aroused about trafficking and other child welfare issues.¹⁵²

Criminal behaviour was seen as an indicator of lack of ‘general credibility’ and of well-founded fear as in the following case:

“The fact that you were caught in total five times due to criminal offences prohibited under the law on narcotics and charges were pressed against you, shows that you did not so much choose [this country] as a place to flee to but rather to let your criminal energy run free. ... In addition it can be concluded from your personal behaviour that you only applied for asylum in order to legally reside [in this country].”¹⁵³

It is important to make sure that children understand what is required of them in terms of cooperation, and why. In one case observed in this research, a negative conclusion regarding credibility was drawn from a girl’s refusal to hand over her cell phone for examination. The child said: *“You asked if I would let you keep my cell phone, and I said no.”*¹⁵⁴ From the detailed exchange between the interviewer and the child, however, it seems that the child may have thought that she was being asked to give up the phone definitively.

In sum, a large number of behaviour patterns were taken as signs of a lack of ‘general’ or ‘personal’ credibility in children’s cases. Before drawing conclusions from a child’s behaviour, it is vital to examine the child’s individual and contextual circumstances, as these may explain the behaviour. Information from staff of reception centres, counsellors and the child’s guardian can offer useful insights, but are not systematically available to decision-makers. One stakeholder commented: *“It is very important that the guardian and the child know each other to ensure that during the interview the guardian is able to clarify possible behaviours that may undermine the child’s credibility: stress, confusion, fear.”*¹⁵⁵

Policy guidance on demeanour

Policy guidance in the countries of focus is very cautious about relying on demeanour to assess credibility. No legal basis or policy guidance was identified that permits the use of the applicant’s demeanour as an indicator of credibility. Swedish guidance notes that demeanour is difficult to assess objectively: *“Credibility has nothing to do with how the information is presented (the applicant’s gestures, gaze etc.) if this cannot be assessed objectively.”*¹⁵⁶

The SMB Manual explains that body language differs from culture to culture and between the genders. It also points out that a person’s lack of emotion when relating an experience does not necessary indicate that he or she has or has not been strongly affected by what has happened.¹⁵⁷

¹⁵² Terre des Hommes (Switzerland), *Disappearing, Departing or Running Away? A Surfeit of Children in Europe?* (2010); J. P. Brekke, Institute for Social Research, *Missing: Asylum Seekers Who Leave Reception Centres in Norway*, Oslo (2012).

¹⁵³ D/025/DZA/M/15.

¹⁵⁴ D/026/AFG/F/17.

¹⁵⁵ SH 61.

¹⁵⁶ Swedish Migration Board, Judicial Position concerning the method for examining reliability and credibility, RCI 09/2013 (10 June 2013), p. 3.

¹⁵⁷ SMB, *Manual for Migration Cases*, section 40.1 ‘Interview and assessment of protection grounds due to gender’.



Observations regarding the use of demeanour as an indicator of ‘general credibility’

Although there is broad agreement that demeanour is not a reliable indicator of credibility, numerous references to it were observed in the course of interviews, found in the transcript of interviews and in the text of decisions, suggesting that demeanour remains what one expert has termed a “persistent vestige of subjective credibility assessment”.¹⁵⁸

Comments were made about demeanour in connection with negative assessments, for instance: “*You did not seem authentic regarding the way of speaking and gave the impression that you did not actually experience what you stated;*”¹⁵⁹ “*you described your submission completely without emotion*”¹⁶⁰ or “*you yourself did not seem very impressed by the past events.*”¹⁶¹

Decision-makers frequently also commented on a child’s demeanour to support positive assessments. In such cases, emotional expressions and reactions were seen as supporting the credibility of the child’s statements.¹⁶² In one case, after the child talks about an attack he experienced, the transcript says that “*he puts his head down on his arms and sobs*”.¹⁶³ The transcript of an interview with a victim of trafficking describes the girl as “*constantly emotional and in tears*”.¹⁶⁴

¹⁵⁸ M. Kagen, ‘Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination’, *Georgetown Immigration Law Journal*, vol. 17, 2002–2003, pp. 367–415 at p. 378.

¹⁵⁹ D/027/AFG/M/17.

¹⁶⁰ D/026/AFG/F/17.

¹⁶¹ D/10/PAK/M/16.

¹⁶² For instance, D/77/ERI/M/17; D/79/DRC/M/17; D/94/AFG/M/16 and D/208/NGA/F/16.

¹⁶³ D/153/BGD/M/17.

¹⁶⁴ D/168/GIN/F/16.

Some transcripts included notes to the effect that the child was upset, crying, trembling or silent. There were also notes such as ‘nodding’ or ‘shows with his hands’ and similar observations.¹⁶⁵ An interviewer explained that she tried to convey a child’s demeanour in the transcript of the interview if the decision would be taken by a person who was not present at the interview itself: “*I make sure that demeanour or other events that I see are visible in the transcripts, which are part of the file. For example, I would write: ‘The applicant sighs’ or ‘the applicant seems irritated’*”.¹⁶⁶

In guidance concerning children involved in court hearings (albeit not in the asylum context), a juvenile court agreed that there is value in reporting the child’s demeanour when producing a transcript of the child’s statements, noting that “*transposing concepts into adult language or summarizing them, could betray their authentic significance and real implications. Thus, the [transcript] shall also report the child’s behaviour and non-verbal expression*”.¹⁶⁷

A child’s demeanour can indeed provide the interviewer with useful information. For instance, the silence of asylum-seeking children has been observed to be a “complex phenomenon” that can have many causes. It can be a feature of ‘ordinary’ adolescence, but can also reflect shock, grief and trauma, fear of jeopardizing one’s application or of endangering family members left behind and anxiety about the future.¹⁶⁸

It is nevertheless important to recognize, as explained in Chapter 3, that distress and emotion can influence the decision-maker’s thinking processes. Jurisprudence has affirmed that in a judicial or administrative proceeding, an individual’s emotional reaction does not necessarily reveal the true or false nature of his declarations, but should be considered in the light of the rest of the available factual elements.¹⁶⁹

UNHCR’s view remains that an applicant’s demeanour may be helpful to prompt or guide questioning, but should not be relied upon as a credibility indicator. If decision-makers refer to a child’s demeanour, this should be in the context of all the evidence, and all the individual and contextual circumstances of the applicant.

¹⁶⁵ D/127/AFG/M/16; D/129/AFG/M/16; D/121/AFG/F/17; D/128/DZA/M/17.

¹⁶⁶ SH 2.

¹⁶⁷ Source: Protocol on Child Hearings of the Rome Juvenile Court, 7 May 2007 (Protocollo per l’audizione del minore del Tribunale per i minorenni di Roma).

¹⁶⁸ R. Kohli, ‘The Sound of Silence: Listening to What Asylum-seeking Children Say and Do Not Say’, *British Journal of Social Work*, vol. 36, 2006, pp. 707–21, at pp. 709 and 720.

¹⁶⁹ In Judgment 1640/2013, the Bari (Italy) Court of Appeal affirms that a comprehensive assessment of a case should take into consideration the applicant’s demeanour, which in the case at hand was considered a further confirmation of credibility. The court refers to the applicant’s reaction during the asylum interview, where he evidenced physical pain, nausea and crying episodes.

5. Summing-up

The research revealed that the determining authorities in the four Member States of focus rely primarily on three indicators – sufficiency of detail, inconsistency and plausibility – to determine whether to accept an asserted fact. Other indicators were also used, most often in a non-specific way, to assess the child's 'general' or 'personal' credibility, even though the focus of credibility assessment should be on the asserted facts.

In particular when considering sufficiency of detail, it is vital to consider the child's background. Lack of detail may not be a sign of an invented or 'learned' story, but can reflect the child's gender, level of education and cultural background. Inability to remember details may also signal past trauma or other mental health problems.

When considering the 'plausibility' of a child's account, the adjudicator has to look at his or her own assumptions and any possible preconceptions about how children in other societies live and act.

Consistency between initial and subsequent interviews, widely used as an indicator of credibility, needs to be approached with care because psychological research has shown that children who are interviewed repeatedly about the same events rarely relate them in precisely the same way each time, and also because initial interviews with children are not always accompanied by the procedural safeguards to which children are entitled.

It is essential, when assessing credibility against the various indicators, to take into account the individual and contextual circumstances of the child. There is no magic recipe for judging a child's credibility, and no way entirely to eliminate subjectivity from the process. Knowledge from disciplines such as psychology or cultural and gender studies can help to make this process as objective as possible.

CHAPTER 7

Concluding Remarks

UNHCR's research confirmed that there is broad recognition in European Union law and policy of the specific responsibilities of states when dealing with applications for international protection from unaccompanied and separated children. It is well established that EU Member States need to have regard to child-specific forms of persecution when assessing children's asylum claims, and must ensure that the best interests of the child are a primary consideration throughout the process.

At the same time, there is little guidance available on how to gather the facts and assess credibility in children's asylum cases, although the high incidence of post-traumatic stress disorder among asylum-seeking children would make such guidance especially important. Most of the scholarly research on gathering and assessing children's testimony focuses on other areas of law, in particular on child abuse and neglect, and on younger children, whereas the majority of unaccompanied and separated asylum-seeking children are adolescents.

When asylum applications presented by unaccompanied children are rejected, it is frequently because their statements are considered to lack credibility. How credibility is assessed in children's cases was observed to differ from one country of focus to another. Sometimes, there appeared to be little distinction made between what was expected of child and adult applicants. On other occasions, interviewers and decision-makers considered age, stage of development and other individual and contextual circumstances as mitigating factors when assessing children's testimony.

Unaccompanied asylum-seeking adolescents have to cope with their precarious status as asylum-seekers together with the many challenges related to adolescence itself, a phase of life involving tremendous physical and emotional changes. If we recognize that adolescents in our own circles are often anxious, mistrustful or unpredictable, we can more easily understand the multiple stressors affecting asylum-seeking adolescents, and the difficulties they may have in placing confidence in those around them.

Against this backdrop, the research concludes that there is a need for further investigation of, and guidance on, how best to elicit and assess testimony from unaccompanied asylum-seeking children, including adolescents, with a view to ensuring quality and consistency in asylum procedures, and protection of their rights as children. The following observations are intended to help take this process forward.

1. Credibility assessment depends on the child being able to participate fully in the procedure.

Unaccompanied children do not always understand what is expected of them at the various stages of the asylum procedure, or the importance of the substantive asylum interview and its relationship to preliminary questioning by police or the asylum authorities. This can lead to the child appearing vague, uncooperative or disinterested, which in turn has been observed to have an effect on credibility assessment. Information on the asylum procedure needs to be tailored for children, communicated in ways that they can understand, and children need time to absorb it. Feedback mechanisms should be in place to confirm children's understanding.

2. Guardians and legal advisers have an important role in helping the child to understand and to prepare for the various stages of the asylum procedure.

EU law requires the appointment of a guardian, but state practice differs in terms of the timing of this appointment, the qualifications and role of guardians, and continuity of guardianship arrangements. Often the guardian has no opportunity to get to know the child ahead of the interview, or the guardian has too many wards, or lacks the relevant qualifications. Qualifications of guardians should be established at EU level, the role and responsibilities of guardians should be better defined, and national procedures should take account of the fact that guardians need time to build trust with the asylum-seeking child.

Three of the countries of focus in this research also provide legal counsel for unaccompanied children in the first instance of the asylum procedure. In view of the particular vulnerability of child applicants, guaranteeing legal counsel at first instance for all unaccompanied children across the EU would be an important contribution towards enabling them to participate in the asylum procedure in a meaningful way.¹

3. When conducting interviews and assessing credibility, it is vital for the interviewer and the decision-maker to understand, and take account of, the child's individual and contextual circumstances in all aspects of their examination of the application.

These include such factors as age, sex, cognitive development, educational level, physical and mental health, sexual orientation and gender identity, and cultural and religious background. Asylum-seeking children should be able to request an interviewer and/or interpreter of the same or opposite sex.

Multidisciplinary training can help interviewers and decision-makers understand the child's individual and contextual circumstances. Specialized training could usefully include child (including adolescent) psychology and development as well as gender issues. Training on the culture and customs of the main countries of origin would help to ensure that decision-makers do not base their conclusions about children's credibility on their own beliefs and assumptions about how children behave.

4. Collaboration among the various actors working with unaccompanied asylum-seeking children can improve the interviewer and the decision-makers' understanding of the child's individual and contextual circumstances.

Where interviewers and decision-makers are different individuals, it is important to ensure that there is scope for communication and consultation between them. Relevant circumstances should be clearly documented

¹ See European Council on Refugees and Exiles, *Right to Justice: Quality Legal Assistance for Unaccompanied Children*, Comparative Report, 2014.

on the file. Beyond age and gender, these may include a wide variety of factors such as educational level, cognitive development, mental health, sexual orientation, and cultural and religious background.

Information about the child is often available but not known or used by interviewers and decision-makers. Within the limits of confidentiality requirements, additional sources of information about the child (for instance, from staff of reception centres, teachers, psychologists, medical professionals and guardians) can help the interviewer and decision-maker to understand the circumstances of the individual child, as can expert advice and opinions. The recast version of the *Asylum Procedures Directive* explicitly recognizes the relevance of expert advice, for instance on medical, cultural, religious, child-related or gender issues.

5. Communicating with children (including adolescents) is a specialized function – all the more so in a cross-cultural context.

- a) EU law recognizes the need for personnel dealing with asylum-seeking children to have the ‘necessary qualifications’, but does not explain what these are. Defining what this means would contribute to quality and consistency of decision-making at the EU level. Not all personnel who interview asylum-seeking children or make decisions on their claims have had the benefit of specialized training for this function. The EASO module on interviewing children is a positive development, but *more specialized training on eliciting a full and truthful account from children and in particular from adolescents is needed*.
- b) *Eliciting relevant information from children requires a climate of trust between the child and the interviewer.* Trust is difficult to establish in an asymmetric relationship such as an asylum interview, and in the short time of a single interview. Training on interviewing children should address this challenge, including the pressures a young asylum-seeker may be under to ‘succeed’ in the mission entrusted to him or her by family members. Targeted research on different approaches to interviewing children – for instance, group interviews, or interviews by child-development specialists – could provide new insights into how best to create a climate of trust.
- c) *Training for interviewers and decision-makers should devote particular attention to the effect of traumatic experiences on children,* in view of the high incidence of post-traumatic stress disorder and other emotional difficulties among asylum-seeking children. The effect of trauma on children’s memories and ability to recount their experiences should be a core part of such training.

6. Interviewers and decision-makers should focus on gathering and assessing facts that are material to children’s claims.

Children are frequently found ‘not credible’ because they are considered to have lied about their age, travel route, or family’s whereabouts, and therefore are assumed to be lying about other elements of their claims. Excessive attention to peripheral issues can lead to a negative assessment of the child’s ‘general’ or ‘personal’ credibility, and to the overall credibility of the claim, sometimes without sufficient attention to the substantive issues underlying it.

The difficulties that asylum-seeking children have in presenting *documentary evidence*, including of their age and identity, need to be recognized. Negative inferences should not be drawn from the absence of documentary evidence alone. The pressures exerted on children, in particular by smugglers, should be taken into account.

7. The central role of the interpreter deserves more attention.

It is vital that interpreters remain neutral, objective and impartial, and that their role is clearly explained to the child. Interpreters are the conduit for verbal communication at nearly all asylum interviews and have considerable influence on what is contained in the written transcript of the interview and how it is

worded. The transcript has particular importance for the credibility assessment when the interviewer and the decision-maker are different people.

Trained and/or certified interpreters are not always available. Training should be provided for interpreters in asylum proceedings, including specialized training for those employed in children's cases. Interviewers should also receive training on how to work with an interpreter. Consideration should be given to setting EU-wide standards for the qualifications required of interpreters used at initial screening interviews and first instance hearings.

8. The credibility indicators identified in Beyond Proof need to be applied in a child-sensitive manner, taking the child's individual and contextual circumstances into account

- a) *Internal consistency*: The research noted that inconsistency was a frequent indicator of lack of credibility, while entirely consistent testimony was sometimes seen as rehearsed or coached. Care needs to be taken with respect to lack of consistency between initial and substantive interviews, because procedural safeguards are not always in place at initial interviews, children do not always understand the purpose and importance of the different interviews, and because research has shown that repeated interviews often do not yield entirely consistent results. When assessing internal consistency, decision-makers need to consider whether the inconsistency concerns core or peripheral matters. Decision-makers would benefit from more exposure to the scientific evidence on children's memory, including the impact of trauma on memory.
- b) *Level of detail*: The research noted that interviewers' and decision-makers' expectations concerning the level of detail a child should provide did not always tally with the child's individual and contextual circumstances, or reflect the scientific evidence on human memory. Many factors can affect a child's ability to provide detail, including age and cognitive development, mental and physical health, gender, position in the family and cultural background. Training that includes expertise from a variety of disciplines can help decision-makers to achieve a solid understanding of what can reasonably be expected of a particular child in terms of detail, and contribute to the quality of credibility assessment.
- c) *Consistency of the child's statements with country-of-origin information* is an important indicator of credibility, but relevant child-specific information about the country or community of origin is not always available. The absence of relevant information increases the risk of speculative arguments regarding the credibility of the child's statements. The lack of supporting COI should not automatically result in a negative credibility finding. Credibility assessments must be based on the entirety of the available relevant evidence submitted by the applicant and/or gathered by the decision-maker.

When child-specific COI is available and used, it often relates more to 'returnability' (for instance, to reception facilities in the country of origin) than to the material elements of the claim. EASO and government services producing COI should reach an understanding on what elements need to be included in child-specific COI and make an effort to gather this information more systematically, at least for the main countries of origin.

- d) Great care needs to be taken when using *plausibility* as an indicator of credibility in a cross-cultural and cross-generational context. It is particularly difficult for an adult to judge what is plausible, reasonable or makes sense from a child's perspective in a foreign setting, and COI cannot always provide the necessary background information. Where decision-makers refer to the lack of plausibility of a child's behaviour or statement, they should explain in detail how this conclusion was reached, and ensure that this indicator is used with reference to the entirety of the evidence and together with other indicators.
- e) *It is problematic to use demeanour and behaviour as indicators of credibility*. An applicant's demeanour may serve to prompt or guide questioning, but because many factors shape it, including among others gender, culture, physical and mental health, it should not be considered determinative of credibility.

Determining authorities often consider an applicant's *behaviour* as supporting or damaging his or her 'general' or 'personal' credibility. This is particularly so with respect to the use of false documents or the destruction of documents. Such behaviour should not automatically be used to impose a higher credibility threshold; the determining authority must assess whether the applicant can provide a satisfactory explanation for the behaviour in question.

9. More clarity is needed on the threshold for establishing credibility, on what 'the benefit of the doubt' means, and how it applies in children's cases.

The difficulty for asylum-seekers to produce evidence to substantiate their claims is well-recognized. Because this difficulty is greater for children than for adults, UNHCR believes that the benefit of the doubt should be extended more liberally in children's cases. The application of the benefit of the doubt allows the decision-maker to reach a clear conclusion to accept an asserted material fact as credible in the absence of proof, where an element of doubt remains. It was observed that the threshold for establishing credibility was not always clear, and that decision-makers' understandings and uses of the 'benefit of the doubt' differ.

10. Finally, further research and reflection on how the decision-maker's own circumstances and attitudes toward children influence the assessment of credibility should be encouraged.

In conclusion, credibility assessment plays a major part in the determination of asylum applications presented by children. The development of guidelines on credibility assessment, including with specific reference to children's asylum procedures, would contribute to improving the quality and consistency of decision-making from one country of asylum to another. It would also contribute to ensuring that the best interests of the child are a primary consideration at all stages of the asylum procedure.

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Austria	
Act on the Establishment of the Federal Office for Immigration and Asylum	Bundesamt für Fremdenwesen und Asyl (BFA) Einrichtungsgesetz BGBl. I, Nr. 87/2012 idF BGBl. I Nr. 68/2013
Administrative Court Procedure Act	Verwaltungsgerichtsverfahrensgesetz BGBl. I, Nr. 33/2013 idF BGBl. I Nr. 122/2013
Asylum Act	Asylgesetz BGBl. I Nr. 100/2005 idF BHBL. I Nr. 144/2013
Basic Welfare Support Agreement	Grundversorgungsvereinbarung BGBl. I, Nr. 80/2004
Federal Constitutional Act on Children's Rights	Bundesverfassungsgesetz über die Rechte von Kindern BGBl. I Nr. 4/2011
Federal Youth Welfare Act	Bundes-Kinder- und Jugendhilfegesetz BGBl. I Nr. 69/2013
Federal Office for Immigration and Asylum Procedure Act	Bundesamt für Fremdenwesen und Asyl (BFA) Verfahrensgesetz BGBl. I Nr. 40/2014
Federal Office for Immigration and Asylum: General Instruction on Minors	BFA, Generalerlass Minderjährige, 17 Dec. 2013 (internal document)
Federal Office for Immigration and Asylum: Binding Instruction on Interviews	BFA, Verbindliche Arbeitsanleitung: Einvernahme, 6 December 2013 (internal document)
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General Civil Code	Allgemeines Bürgerliches Gesetzbuch –ABGB JGS Nr. 946/1811 idF BGBl. I Nr. 179/2013
Italy	
Code of Criminal Procedure, Presidential Decree of 22 September 1988, no. 447	Codice di Procedura Penale, Decreto del Presidente della Repubblica 22 settembre 1988, n. 447
Decree Law 22 August 2014, no. 119, on urgent measures concerning violence and lawlessness at sporting events, the recognition of international protection and to assure the functioning of the Ministry of Interior	Decreto-Legge 22 agosto 2014, n. 119, Disposizioni urgenti in materia di contrasto a fenomeni di illegalità e violenza in occasione di manifestazioni sportive, di riconoscimento della protezione internazionale, nonché per assicurare la funzionalità del Ministro dell'interno
Directive on Unaccompanied Foreign Minors seeking Asylum (Ministries of Interior & Justice) of 7 December 2006	Direttiva sui Minori Straniera Non Accompagnati Richiedenti Asilo (Ministro dell'Interno d'intesa con il Ministro della Giustizia, 7 dicembre 2006)
Law 97/2013 of 6 August 2013 on implementation of obligations resulting from Italy's membership in the European Union	Legge 6 agosto 2013, n. 97, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea
Legislative Decree no. 286/98 of 25 July 1998: Consolidated Act concerning Immigration and Aliens Affairs	Decreto Legislativo, 25 luglio 1998, n. 286, Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero
Legislative Decree no. 140 of 30 May 2005 on the application of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers	Decreto Legislativo 30 maggio 2005, n. 140, Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri

Unofficial English translation	Original version
Legislative Decree no. 251 of 19 November 2007 on the application of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted...	Decreto Legislativo 19 novembre 2007, n. 251, Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta...
Legislative Decree 25/2008 of 28 January 2008 on the application of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status	Decreto Legislativo 28 gennaio 2008, n. 25, Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento edella revoca dello status di rifugiato
Ministry of Interior Circular no. 17272/7 of 9 July 2007 on the Identification of Minor Migrants	Circolare del Ministero dell'Interno Prot. n. 17272/7, 9 luglio 2007 'Identificazione dei migranti minorenni'
Presidential Decree of 22 September 1988, no. 448 on the Approval of provisions concerning criminal proceedings against minor defendants	Decreto del Presidente della Repubblica 22 settembre 1988, n. 448, Approvazione delle disposizioni sul processo penale a carico di imputati minorenni'

Netherlands

Aliens Act 2000	Vreemdelingenwet 2000, 1 April 2001, BWBR0011823
Aliens Circular 2000 A	Vreemdelingencirculaire 2000 A, 1 April 2001, BWBR0012287
Aliens Circular 2000 B	Vreemdelingencirculaire 2000 B, 1 April 2001, BWBR0012289
Aliens Circular 2000 C	Vreemdelingencirculaire 2000 C, 1 April 2001, BWBR0012288
Aliens Decree 2000	Vreemdelingenbesluit 2000, 1 April 2001, BWBR0011825
Aliens Regulation 2000	Voorschrift Vreemdelingen 2000, 1 April 2001, BWBR0012002
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Constitution of the Kingdom of the Netherlands	Grondwet voor het Koninkrijk der Nederlanden, 24 August 1815, BWBR0001840
Decision on the acceptance of legal persons	Besluit aanvaarding rechtspersoon, 12 January 2005, BWBR0017896
General Administrative Law Act	Algemene Wet Bestuursrecht, 1 January 1994, BWBR0005537
IND Work Instruction 2010/14 Decision-Making: Assessment of credibility and weight (of asylum reasons)	IND-Werkinstructie nr. 2010/14 (AUB) Beslissystematiek: Beoordeling geloofwaardigheid en zwaarwegendheid
IND Work Instruction 2014/5 (SDIS), Working (together) with interpreters	IND-Werkinstructie nr. 2014/5 (SDIS) (Samen)werken met een tolk
Law on certification of interpreters and translators (2007)	Wet beëdigde tolken en vertalers, 11 Oct. 2007, BWBR0022704

Sweden

Act on Guardianship for Unaccompanied Children	Lag om god man för ensamkommande barn (SFS 2005:429, 2005)
Act on Legal Aid	Rättshjälpslagen (SFS 1996:1619, 1996)
Act on Legal Counsel	Lag om offentligt biträde (SFS 1996:1620, 1996)
Act on Reception of Asylum Seekers and Others	Lagen om mottagande av asylsökande m.fl (SFS 1994:137, 1994)
Administrative Court Procedure Act	Förvaltningsprocesslagen (SFS 1971:291, 1971)
Administrative Procedure Act	Förvaltningslagen (SFS 1986:223, 1986)
Aliens Act	Utlänningslagen (SFS 2005:716, 2005)
Aliens Ordinance	Utlänningsförfordningen (SFS 2006:97, 2006)

Unofficial English translation	Original version
Children and Parents Code	Föräldrabalk (SFS 1949:381, 1949)
Code of Judicial Procedure	Rättegångsbalk (SFS 1942:740, 1942)
Enhanced Protection for Unaccompanied Children, Government Bill 2004/05:136	Regeringens proposition 2004/05:136 – Stärkt skydd för ensamkommande barn
Municipal reception of unaccompanied children, Government Bill 2012/13:162	Regeringens proposition 2012/13:162, Kommunalt mottagande av ensamkommande barn
Ordinance with instructions for the Swedish Migration Board	Förordning med instruktion för Migrationsverket (SFS 2007:996,2007)
Social Services Act	Socialtjänstlagen (SFS 2001:453, 2001)
SMB Instruction on the Use of Interpreters	Migrationsverket. Rutin för tolkanvändning vid Migrationsverket), GD 82/2008 (10 November 2008)
SMB Judicial Position on Age Assessment	Migrationsverket. Rättsligt ställningstagande angående åldersbedömning, RCI 13/2014, 11 June 2014
SMB Judicial Position on Guardianship and Public Counsel for Unaccompanied Children in Cases where the Dublin Regulation Applies	Migrationsverket. Rättsligt ställningstagande angående god man och offentligt biträde för barn utan vårdnadshavare i ärenden där Dublinförordningen ska tillämpas, RCI 07/2014, 14 January 2014
SMB Judicial Position regarding the Probable Identity in Asylum Cases	Migrationsverket. Rättsligt ställningstagande angående sannolik identitet i asylärenden, RCI 08/2013, 31 May 2013
SMB Judicial Position on the Enforcement of Decisions concerning UASC	Migrationsverket. Rättsligt ställningstagande angående verkställighet av beslut som rör ensamkommande barn, RCI 10/2013, 12 June 2013
SMB Judicial Position concerning the Method for Examining Reliability and Credibility	Migrationsverket. Rättsligt ställningstagande angående metod för prövning av tillförlitlighet och trovärdighet, RCI 09/2013, 10 June 2013
Swedish Migration Board Manual for Migration Cases	Migrationsverkets Handbok för Migrationsärende
Swedish Migration Board Policy on Children	Migrationsverket. Barnpolicy, GDA 6/2011, 29 May 2011
Swedish Migration Policy in a global perspective, Government Bill 1996/97:25	Regeringens proposition 1996/97:25 – Svensk migrationspolitik i globalt perspektiv

Case Law

The following are selected court decisions concerning aspects of credibility assessment in cases of unaccompanied asylum-seeking children. The cases are drawn from countries of focus in this research and from a number of English-speaking countries.

Australia

FEDERAL COURT

These decisions are available at:

<http://goo.gl/PXJb3Z>

- DZADO v Minister for Immigration & Anor [2013] FMCA 1 (1 March 2013)
- VFAA v Minister for Immigration & Multicultural & Indigenous Affairs [2004] FCA 514 (29 April 2004)
- WAEF v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCA 1121 (10 September 2002)
- Odhiambo v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCAFC 194 (20 June 2002)

REFUGEE REVIEW TRIBUNAL

These decisions are available at:

<http://www.refworld.org>

- RRT Case No. 1303843, [2013] RRTA 375 (27 June 2013)
- RRT Case No. V95/03227, [1995] RRTA 1613 (7 July 1995)

Austria

CONSTITUTIONAL COURT (VERFASSUNGSGERICHTSHOF)

These decisions are available at:

<https://www.ris.bka.gv.at/Judikatur>

- VfGH U 2416/2013-8, 3.03.2014,
- VfGH U 1919/2013 ua, 20.02.2014,
- VfGH U 1685/2012, 13.09.2013
- VfGH U1257/2012-18 26.06.2013
- VfGH U 1343/2012, 26.06.2013
- VfGH U 98/12, 27.06.2012

FEDERAL ADMINISTRATIVE COURT (BUNDESVERWALTUNGSGERICHT)

- BVwG, W191 1438370-1, 02.07.2014

HIGHER ADMINISTRATIVE COURT (VERWALTUNGSGERICHTSHOF)

- VwGH 2007/01/0631, 28.06.2011
- VwGH 2008/01/0266, 17.03.2011
- VwGH 2005/01/0463, 16.04.2007
- VwGH 2006/01/0362, 14.12.2006
- VwGH 2001/20/0457, 26.11.2003
- VwGH 2000/20/0200, 16.04.2002
- VwGH 2001/01/0122, 12.03.2002

INDEPENDENT FEDERAL ASYLUM SENATE (UNABHÄNGIGER BUNDESASYLSENAT)

- 268.620/0/17E-XIX/62/06, 02.05.2007

ASYLUM COURT (ASYLGERICHTSHOF)

- AsylGH C1 425807-1/2012, 15 May 2013
- AsylGH C1 425806-1/2012, 15 May 2013
- AsylGH C1 423250-1/2011, 19 February 2013
- AsylGH C4 423402-1/2011, 4 June 2012
- AsylGH A5 411235-1/2010, 5 September 2011
- AsylGH C2 415112-1/2010, 25 October 2010
- AsylGH C2 413152-1/2010, 6 September 2010
- AsylGH A5 411235-1/2010, 11 August 2010
- AsylGH A5 414153-1/2010, 11 August 2010
- AsylGH A5 417766-1/2011, 10 March 2011
- AsylGH D3 405993-1/2009, 2 March 2011
- AsylGH A5 411235-1/2010, 11 August 2010
- AsylGH D4 309468-2/2008, 29 July 2008

Canada

FEDERAL COURT

These decisions are available at:
<http://decisions.fct-cf.gc.ca/fc-cf/en/nav.do>

- Qiu v. Canada (Citizenship and Immigration), 2009 FC 605 (9 June 2009)
- Canada (Citizenship and Immigration) v. Patel, 2008 FC 747 (17 June 2008)
- Kareem Jabari v. Canada (Citizenship and Immigration), 2008 FC 225 (21 February 2008)
- Bema v. Canada (Citizenship and Immigration), 2007 FC 845 (22 August 2007)
- Diagana v Canada (Citizenship and Immigration), 2007 FC 330 (28 March 2007)
- Duale v. Canada (Citizenship and Immigration), 2004 FC 150 (30 January 2004)
- Xiao v. Canada (Citizenship and Immigration), 2001 FCT 195 (26 March 2001)
- Li, Feng Chai v. MCI (Minister of Citizenship and Immigration), 2001 FCT 1242 (14 November 2001)
- Li, Tian Hua v. MCI (Minister of Citizenship and Immigration), 2001 FCT 1245 (14 November 2001)
- Bin, Qio Jian v. MCI (Minister of Citizenship and Immigration), 2001 FCT 1246 (14 November 2001)
- Ni, Le v. MCI (Minister of Citizenship and Immigration), 2001 FCT 1240 (14 November 2001)
- Li, Yi Juan v. MCI (Minister of Citizenship and Immigration), 2001 FCT 1238 (14 November 2001)
- Assalaarachchi v. Canada (Citizenship and Immigration), 2000 FCT 14908, (10 February 2000)
- Uthayakumar v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 8280 (FC) 18 June 1999

Ireland

HIGH COURT

These decisions are available at: www.courts.ie

- K. (a minor) v Refugee Appeals Tribunal & Ors [2012] IEHC 479 (20 November 2012)
- S. O. (a minor) v Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform [2010] IEHC 151 (5 February 2010)
- H. (a minor) v. Minister for Justice, Equality and Law Reform [2009] IEHC 325 (17 July 2009)
- S.S.S. v. Minister for Justice, Equality and Law Reform, [2009] IEHC 329 (14 July 2009)
- J.M.A. v. Minister for Justice, Equality and Law Reform & Anor, [2009] IEHC 83 (6 February 2009)
- Odunbaku (a minor) v Refugee Applications Commissioner & Ors, [2006] IEHC 28 (1 February 2006)
- Moke v Refugee Applications Commissioner [2005] IEHC 317 (6 October 2006)

The Netherlands

COUNCIL OF STATE (RAAD VAN STATE), ADMINISTRATIVE LAW DIVISION

- These decisions are available at: <http://www.raadvanstate.nl>
- Council of State, Administrative Law Division, Judgment 201209264/1/V1 of 4 September 2013
- Council of State, Administrative Law Division, Judgment 201100204/1/V1 of 3 July 2012
- Council of State, Administrative Law Division, Judgment 201101454/1/V1 of 21 December 2011
- Council of State, Administrative Law Division, Judgment 201012225/1/V2 of 8 December 2011

DISTRICT COURTS

These decisions are not publicly available. They are available to subscribers at:

www.migratiweb.nl or www.vluchtweb.nl

- Roermond, 30 October 2013, AWB 13/25914 and AWB 13/25913
- Roermond, 8 August 2013, AWB 13/18748 and AWB 13/18747
- The Hague, 4 June 2013, AWB 13/12062

- Middelburg, 23 May 2013, AWB 13/11933 (interim measure) and 13/11931
- Amsterdam, 2 May 2013, AWB 12/35422
- Zwolle, 11 April 2013, AWB 11/41592
- Groningen, 7 December 2011, AWB 11/9581

Sweden

MIGRATION COURT OF APPEAL (MIGRATIONSÖVERDOMSTOLEN)

These decisions are available at:
<http://goo.gl/e0bbR>

- Judgment of the MCA, 18 September 2006 (UM 122-06), MIG 2006:1
- Judgment of MCA, 18 January 2007 (UM 149-06), MIG 2007:1
- Judgment of the MCA, 19 March 2007 (UM 540-06) MIG 2007:12
- Judgment of MCA, 15 June 2007 (UM 837-06) MIG 2007:33
- Judgment of MCA, 27 June 2007 (UM 475-06) MIG 2007:37
- Judgement of MCA, 20 January 2009, (UM 1737-08), MIG 2009:8
- Judgment of MCA, 20 January 2009 (UM 1737-08) MIG 2009:9
- Judgment of MCA, 9 March 2011 (UM 3367-10) MIG 2011:6
- Judgment of MCA, 7 September 2011 (UM 10404-10) MIG 2011:15
- Judgment of MCA, 25 April 2012 (UM 5928-11) MIG 2012:18
- Judgment of MCA, 11 February 2014 (UM 2437-13) MIG 2014:1

MIGRATION COURT OF STOCKHOLM

Judgments of the Migration Court are not publicly available

Judgment of the MC, 28 January 2014 (UM 8257-13)

Judgment of the MC, 21 November 2013 (UM 8077-13)

United Kingdom

SUPREME COURT

These decisions are available at:
<http://supremecourt.uk/decided-cases/index.shtml>

- Secretary of State for Home Department v MN and KY (Scotland) [2014] UKSC 30 (6 March 2014)
- A. R (on the application of) v London Borough of Croydon (Rev 1) [2009] UKSC 8 (26 November 2009)

COURT OF APPEALS (CIVIL DIVISION)

These decisions are available at:
<http://www.bailii.org/ew/cases/EWCA/Civ/>

- JA (Afghanistan) v Secretary of State for the Home Department [2014] EWCA Civ 450 (9 April 2014)
- AA (Iran), R (On the Application of) v Upper Tribunal (IAC) & Anor [2013] EWCA Civ 1523 (26 November 2013)
- KA (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 1014 (25 July 2012)
- HK (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 315 (16 March 2012)
- DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305 (22 March 2011)
- FA (Eritrea) v Secretary of State for the Home Department (2009) EWCA Civ 52 (27 January 2009)
- AA (Afghanistan) v Secretary of State for the Home Department [2007] EWCA Civ 12 (29 January 2007)

HIGH COURT (ADMINISTRATIVE COURT)

This decision is available at:
<http://www.bailii.org/ew/cases/EWHC/Admin/>

- R (on the application of Blerim Mlloja) v Secretary of State for the Home Department [2005] EWHC 2833 (Admin) (17 November 2005)

ASYLUM AND IMMIGRATION TRIBUNAL (AIT)

These decisions are available at:

<http://www.refworld.org>

- AA (Language Diagnosis: Use of Interpreters)
Somalia v. SSHD, [2008] UKAIT 00029
(9 April 2008)
- HS (Homosexuals: Minors, Risk on Return)
Iran [2005] UKAIT 00120 (4 August 2005)

UPPER TRIBUNAL

These decisions are available at:

<https://tribunalsdecisions.service.gov.uk/utiac>

- NA v. SSHD (UT rule 45: Singh v Belgium)
Iran [2014] UKUT 00205 (IAC)
- AZ (Asylum legacy cases) Afghanistan v
Secretary of State for the Home Department
(2013) UKUT 00270(IAC)
- AA (unattended children) Afghanistan CG
[2012] UKUT 16 (IAC) (01 February 2012)

United States of America

COURT OF APPEALS

These decisions are available at:

<http://www.refworld.org>

- Mejilla-Romero v. Holder, 600 F.3d 63
(1st Cir. 2010)
- Mejilla-Romero v. Holder, 614 F.3d 572
(1st Cir. 2010, rehearing)
- Todorovic v. US Attorney Gen., 621 F.3d 1318
(11th Cir. 2010)
- Hernandez-Ortiz v. Gonzales, 496 F.3d 1042
(9th Cir. 2007)
- Shahinaj v. Gonzales, 481 F.3d 1027
(8th Cir. 2007)
- Jorge-Tzoc v. Gonzalez, 435 F.3d at 146
(2nd Cir. 2006)
- Lukwago v. Ashcroft, 329 F.3d 157
(3rd Cir. 2003)
- Geovanni Hernandez-Montiel v INS,
225F.3d 1084 (9th Cir. 2000)

Further Reading

This Reading List does not reproduce works included in the Bibliography of UNHCR's May 2013 report Beyond Proof: Credibility Assessment in EU Asylum Systems. That Bibliography contains extensive resources on credibility assessment in the asylum context.

With the exception of the section on interpretation, this Reading List contains materials that focus on children.

Books and Articles, by Author

CHILD DEVELOPMENT AND MEMORY

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Blakemore, Sarah-Jayne and Suparna Choudhury, 'Development of the Adolescent Brain: Implications for Executive Function and Social Cognition', *Journal of Child Psychology and Psychiatry*, vol. 47, nos. 3–4 (2006), pp. 296–312.

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CHILD TESTIMONY AND DECISION-MAKERS' ATTITUDES

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Abbreviations

ACCORD	Austrian Centre for Country of Origin and Asylum Research
AsylGH	Asylum Court (Asylgerichtshof) Austria
AVG	General Administrative Procedures Act Austria
AWB	General Administrative Law Act Netherlands
BAA	(Former) Federal Asylum Office (Bundesasylamt) Austria
BFA	Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl) Austria
BvWG	Federal Administrative Court (Bundesverwaltungsgerichtshof) Austria
CEAS	Common European Asylum System
CIS	Citizenship and Immigration Services (US)
CJEU	Court of Justice of the European Union
COC	Cultuur en Ontspanningscentrum (Centre for Culture and Leisure)
COI	Country-of-origin information
CRC	Convention on the Rights of the Child
CSEL	Centre for the Study of Emotion and Law
D	Decision
DCM	Dialectic Communication Method
DSM-IV	Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition
DLO	Daily Learning Organization (Sweden)
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EU	European Union
EWCA	England and Wales Court of Appeal
ExCom	Executive Committee of the High Commissioner's Programme (UNHCR)
FDQ	Further Developing Asylum Quality in the EU
FGM	female genital mutilation
FRA	Fundamental Rights Agency (European Union)
GC	General Comment
HHC	Hungarian Helsinki Committee
IAGCI	Independent Advisory Group on Country Information
IARLJ	International Association of Refugee Law Judges
ICC	International Criminal Court
IEHC	High Court of Ireland

- IND** Immigration and Naturalization Service (Netherlands)
- IOM** International Organization for Migration
- ISAF** International Security Assistance Force
- IV** interview
- JSTOR** Journal Storage
- LGBTI** lesbian, gay, bisexual, transgender and intersex
- MC** Migration Court
- MCA** Migration Court of Appeal (Sweden)
- NOVA** Norwegian Social Research Institute
- PDES** Policy Development and Evaluation Service (UNHCR)
- SCEP** Separated Children in Europe Programme
- SH** Stakeholder
- SMB** Swedish Migration Board
- SOGI** Sexual Orientation & Gender Identity
- SOU** Swedish government report
- SSHD** Secretary of State for the Home Department
- TC** Territorial Commission for the Recognition of International Protection (Italy)
- UASC** Unaccompanied or separated child
- UBAUM** Unterstützung der Behörden bei Asylverfahren unbegleiteter Minderjährigen (Support for the authorities conducting asylum procedures of unaccompanied minors)
- UK** United Kingdom
- UKAIT** United Kingdom Asylum and Immigration Tribunal
- UKBA** United Kingdom Border Agency
- UKUT** United Kingdom Upper Tribunal
- UKSC** United Kingdom Supreme Court
- UMA** Unaccompanied minor asylum seeker
- UNHCR** United Nations High Commissioner for Refugees
- UNICEF** United Nations Children's Fund
- UNTS** United Nations Treaty Series
- US** United States (of America)
- VIS** Visa Information System (EU)
- VwGH** Verwaltungsgerichtshof (Higher Administrative Court, Austria)

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