

SUMMARY

# BEYOND PROOF

Credibility Assessment in EU Asylum Systems



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# 1. Introduction

The credibility assessment is a core part of the adjudication of asylum applications. Status determination requires the decision-maker first to establish the material facts in the case. The credibility assessment is an integral part of this first stage. The credibility assessment involves a determination of whether and which of the applicant's statements and other evidence relating to the material elements of the claim can be accepted. This therefore determines which are taken into account in the analysis of whether the applicant has a well-founded fear of persecution in terms of the 1951 Convention relating to the Status of Refugees (1951 Convention) and/or faces a real risk of suffering serious harm in terms of *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* (Qualification Directive or QD), if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence.

The assessment of credibility is often the pivot upon which the outcome of the first instance determination procedure turns. In the exercise of its supervisory responsibility under its Statute and Article 35 of the 1951 Convention, the United Nations High Commissioner for Refugees (UNHCR) has noted a trend across European Union (EU) Member States whereby first instance negative decisions on applications for international protection often seem to result from the fact that key elements of the applicants' statements are not accepted as credible. In addition, while recognizing the different national legal traditions within the EU, UNHCR has noted that there is not a common understanding of and approach to the credibility assessment among its Member States.

With the exception of guidance pertaining to a few aspects of the credibility assessment in Article 4 QD and some relevant provisions in *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status* (Asylum Procedures Directive or APD), the EU asylum *acquis* provides little guidance on this core task of status determination. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, (UNHCR, Handbook), and the UNHCR Note on Burden and Standard of Proof, provide some additional guidance.

In September 2011, the Hungarian Helsinki Committee, in partnership with UNHCR, the International Association of Refugee Law Judges and Asylum Aid (UK), launched a project, *Towards Improved Asylum Decision-Making in the EU* (also known as 'CREDO'), which aimed to contribute to better structured, objective, high-quality and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States, as well as to promote a harmonized approach, reflecting relevant provisions in EU law and international and regional standards. The project received financial support from the European Refugee Fund (Community Actions strand) of the European Commission.

This report represents a summary of the main findings of the research conducted by UNHCR as part of this project. The full report of *Beyond Proof – Credibility Assessment in EU Asylum Systems* is available in the CD-ROM at the back of this document. The full report contains complete references to relevant supporting material and sources, as well as more detailed analysis and explanation of the information contained in this summary.



## Purpose of the report

The EU Common European Asylum System (CEAS) aims to ensure that, regardless of the Member State in which an application for international protection is lodged, the application should receive the same level of treatment as regards procedural arrangements and status determination. However, the fact that credibility findings can determine the outcome of an application means that if the approach to the assessment of credibility differs, the examination of similar cases may result in very different outcomes across the EU. This will occur even if Member States apply the same legal concepts under the Qualification Directive and the Asylum Procedures Directive, and adopt a common interpretation of the provisions therein. Variances in outcomes may also occur within national jurisdictions where individual decision-makers exercise significant discretion and employ different approaches to the credibility assessment. This has been recognized by the EU which, through the European Asylum Support Office (EASO), delivers a common training programme, the *European Asylum Curriculum* (EAC), for national asylum officials across the EU. This programme includes a module specifically on evidence assessment, including the credibility assessment.

With this report, UNHCR thus hopes to contribute to the further harmonization of Member State practices as they relate to the assessment of credibility. This report seeks to clarify some key concepts, reference key standards, outline factors that have a bearing on the credibility assessment, and provide some insights into state practices on specific aspects of the credibility assessment. UNHCR's own observations and recommendations in this area reflect its experience and challenges in its own capacity as a refugee status determination decision-making body, and in particular the extensive work undertaken in recent years to support and train decision-makers in this area. There is a pressing need for comprehensive and up-to-date guidance on credibility assessment to address the challenges faced by adjudicators in asylum systems. UNHCR has therefore embarked on the review of its own guidance with a view to producing updated

guidelines on credibility assessment that reflect recent developments in international refugee law and other relevant areas of law. This report thus does not constitute that updated guidance, although its findings will be taken into account in the guidance's preparation process.

## Scope of the report

A distinctive feature of this research was its focus on the implementation of the credibility assessment in practice by first instance decision-makers. National research was carried out in Belgium, the Netherlands and the United Kingdom between October 2011 and August 2012. In agreement with the state authorities, these three Member States were selected for inclusion in the research because they had developed national guidelines and standards for guidance on the credibility assessment or had introduced training for all new case officers based on a shorter version of the EAC Module on Evidence Assessment.

It is important to note that this report is not an audit of the practices of the national asylum authorities in these countries. Rather, the state practices observed during the research and evidenced through the jurisprudence of national courts are used as illustrations of the issues discussed in the report. These are relevant for and aim at informing the practice of all the asylum systems of the EU. UNHCR is deeply appreciative of the cooperation, time and expertise offered by the asylum authorities, as well as the many other stakeholders who contributed to this research.

In line with the UNHCR's Age, Gender and Diversity (AGD) Policy, the report mainstreams and systematically applies an age- gender- and diversity-sensitive approach in its focus and analysis. Due to the limited resources and time available for the project, and the complexities of the issues at hand, the scope of this report extends only to selected aspects of the credibility assessment in the normal first instance asylum procedure. These selected aspects are the purpose of the credibility assessment and its place in the overall process of establishing the facts; the principles underpinning the credibility assessment; the 'shared burden'; the credibility indicators; and the benefit of the doubt. The structure of the report has been built around these concepts.

In light of developments in academic research in disciplinary fields relevant to the assessment of credibility in the asylum procedure, including neurobiology, psychology, gender and cultural studies, anthropology, and sociology, these have been reflected in this report to the extent that researchers had already articulated their relevance in academic publications. In addition to the chapters on the concepts listed above, the report thus also contains an additional chapter, which outlines and explains in plain language the scientific evidence that buttresses the factors that need to be taken into account when assessing credibility. The report, however, does not merely list these factors and their relevance in a separate chapter; it undertakes the more challenging exercise of intersecting these factors in a practical manner with the application of the various legal concepts throughout the report.

UNHCR has also translated the legal and theoretical concepts discussed in the report into practical checklists to assist decision-makers and to support a fair assessment of credibility in the asylum procedure. These checklists are annexed to this summary.

# Methodology

A mixed methods approach was employed for this research:

- 1 desk-based documentary research and analysis of:
  - (a) legislation and administrative provisions in the three Member States;
  - (b) over 200 rulings by courts in EU Member States and other countries (Canada, the USA, Australia and New Zealand), the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR), the United Nations Committee against Torture (CAT), and relevant rulings from the international criminal tribunals (the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)) on assessing testimonial evidence;
  - (c) available state guidance by national asylum authorities and/or tribunals in Sweden, Australia, Canada and the USA;
  - (d) the EAC module on Evidence Assessment;
  - (e) over 70 academic publications on the practice of refugee law and other scientific disciplines as they relate to the assessment of credibility in the asylum procedure.
- 2 the selection and review of 120 first instance written decisions and case files;
- 3 the observation of 29 personal interviews of applicants;
- 4 interviews and consultation with 74 national stakeholders; and
- 5 the observation of and participation in training sessions for decision-makers on the credibility assessment.

## 2. Challenges in the credibility assessment

The task of gathering relevant information to substantiate the application, and determining whether the applicant's statements relating to the material facts of the claim can be accepted, is extremely complex. The challenges of the credibility assessment in the asylum procedure are compounded by the geographical and cultural distance between the country to which the presented facts relate and the country where the application for international protection is examined, as well as requirements of confidentiality regarding the collection of information on individual cases. In addition, the reality facing determining authorities is that there is often a paucity of documentary and other evidence confirming or supporting an applicant's statements, while such evidence as is available may be fragmentary and uncertain.

Moreover, the applicant's statements and other evidence provided to substantiate the application - and thus the assessment of credibility - are affected by the individual and contextual circumstances of each applicant. Examiners are, therefore, required to have an understanding of these factors. They include age, gender, sexual orientation and/or gender identity, culture, social and economic status, education, religion, state of mental and physical health, beliefs, values, personal experiences in the country of origin or place of habitual residence, as well as those in any transit country and the Member State. Factors such as the working of the human memory, the psychology of the applicant, and his or her experience of traumatic events also have an impact and need to be understood. Decision-makers also need to be aware of the influence of their own thinking processes, their personal background and values, and of what the wider political, societal and institutional context may have on their assessment of credibility. The repetitive nature of the task and the routine exposure to accounts of trauma and ill-treatment, which may lead to case-hardening and credibility fatigue, must also be considered.

It is apparent that multi-lingual and cross-cultural communication in the asylum procedure exacerbates the scope for misunderstandings and errors. The decision-maker's ability to conduct a fair assessment of credibility is affected by the quality of the first instance asylum procedure, including the opportunity for and quality of the personal interview(s); the accuracy of interpretation and translation services; the accuracy and detail of written interview reports (in the absence of an audio-recording of interviews); the pro-activity and quality of the determining authority's independent fact-finding enquiries; and the country of origin information (COI) and other information resources available to the decision-maker. It is also affected by the time-scale of the procedure, procedural rules, and the availability and competence of human resources.

In light of these widely recognized challenges, it was surprising to note that many decision-makers interviewed in this research stated that the credibility assessment was not one that they found particularly difficult, and that it was a straightforward task.

### Principles and standards of the credibility assessment

Despite relatively little explicit guidance, decision-makers do not have unfettered discretion in the assessment of credibility in the asylum procedure. They should adhere to some fundamental principles and standards, which derive from the legislative instruments of the EU and international human rights treaties, as expressed in the decisions and guidance of international and regional bodies such as the CJEU, the ECtHR, CAT and UNHCR. At the national level, courts have also contributed to the development of standards for the credibility assessment in their jurisprudence. Moreover, some states and judicial bodies have produced specific guidance on the credibility assessment.

The following are key principles and standards that have been identified as relevant for the credibility assessment:

- (a) **Shared duty** The duty to substantiate the application lies ‘in principle’ with the applicant. However, as the CJEU has stated in the case of *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, “the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.”
- (b) **Individual assessment** The credibility assessment must be conducted on an individual basis taking into account the individual and contextual circumstances of the applicant.
- (c) **Objective and impartial assessment** Decision-makers should neither prejudge the case nor approach the task with scepticism or a refusal mind-set. Decision-makers should be aware that their own values, prejudices and views, emotional and physical state can all affect the objectivity of their assessments, and should strive to minimize these.
- (d) **Evidence-based assessment** Credibility findings have to be supported by the evidence. Adverse credibility findings should not be based on unfounded assumptions, subjective speculation, conjecture, stereotyping, intuition, or gut feelings.
- (e) **Focus on the material facts** The credibility assessment should focus on those facts asserted by the applicant that are identified as material for qualification for international protection. Adverse credibility findings must be substantial in nature and not relate only to minor matters.
- (f) **Opportunity for applicant to comment on potentially significant adverse credibility findings** The applicant should have an opportunity to clarify and/or provide explanations to address any potential adverse credibility findings. This stems from the right to be heard and of defence.
- (g) **Credibility assessment based on entire evidence** The credibility assessment must be based on the entirety of the available relevant evidence as submitted by the applicant and gathered by the determining authority by its own means, including additional explanations and documentary or other evidence provided by the applicant.
- (h) **Close and rigorous scrutiny** The assessment of the credibility of the asserted material facts must be carried out with close and rigorous scrutiny, paying due attention to the observations submitted by the applicant. Decision-makers are required to dispel any doubts.
- (i) **Benefit of the doubt** The principle of the benefit of the doubt reflects recognition of the considerable difficulties applicants face in obtaining and providing evidence to support their claim as well as the potentially grave consequences of a wrongful denial of international protection. 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 where an element of doubt remains.
- (j) **Clear and unambiguous credibility findings and a structured approach** The decision-maker should reach clear and unambiguous findings on the credibility of the identified material facts and explicitly state whether the asserted material fact is accepted as credible or not accepted. A structured approach to the assessment of credibility supports the appropriate application of the above-mentioned standards.

# 3. A multi-disciplinary approach

Expectations regarding the applicant's ability to substantiate his or her application; the indicators used to assess the credibility of the applicant's statements; and the criteria applied in determining whether to afford the applicant the benefit of the doubt are all based on assumptions about human memory, behaviour, values, attitudes, perceptions of and responses to risk, and about how a genuine account is presented. However, scientific research has shown that many of these assumptions may not be in accordance with what is now known about human memory, behaviour, and perceptions. Indeed, the basic underlying assumption appears to be that there is a *norm*, and deviations from this norm may be indicative of a lack of credibility. On the contrary, research indicates that there is no such norm, and that human memory, behaviour and perceptions vary widely and unpredictably as they are affected by a wide range of factors and circumstances.

For this reason, the credibility assessment must be conducted taking into account fully the individual and contextual circumstances of the applicant. This requires the decision-maker to cross geographical, cultural, socio-economic, gender, educational and religious barriers, and to take account of different individual experiences, temperaments and attitudes. Indeed, this constitutes a legal requirement. Decision-makers also need to be aware of the factors that may influence their own approaches to the credibility. These factors, which are also reflected in the EAC Module on Evidence Assessment, are discussed below.

## The applicant's individual and contextual circumstances

The applicant's individual and contextual circumstances should be taken into account routinely and in an integrated manner in all aspects of the credibility assessment. This includes, for instance, in determining whether the applicant has made a genuine effort to substantiate the application; whether the authority has discharged its duty to cooperate in this process; whether specific indicators are reliable indicators of the credibility of the information provided by the applicant; whether explanations given by the applicant for identified credibility problems are reasonable; whether reasons provided by the applicant for a lack of supporting evidence are satisfactory; or whether the principle of the benefit of the doubt should be applied with respect to facts for which an element of doubt remains. As such, it is crucial that the determining authority seeks to identify and understand, at the earliest possible opportunity, all the individual and contextual circumstances that may affect the credibility assessment. UNHCR's research revealed some good practice in this regard in the three Member States surveyed.

Relevant factors that need to be taken into account include:

- (a) the limits and variations of human memory, in particular the wide-ranging variability in people's ability to record, retain, and retrieve memories; in the accuracy of memories for dates, times, appearance of common objects, proper names, and verbatim verbal exchanges (the recall of all of which is nearly always reconstructed from inference, estimation and guesswork). Directly relevant are also the impact of high levels of emotion on the encoding of any memory; and the influence upon memory of the questioning and the way questions are asked;
- (b) the impact of trauma and other mental ill-health on memory, behaviour and testimony;
- (c) the influence of factors such as disorientation, anxiety, fear, lack of trust in authorities or interpreters on the disclosure of material facts and submission of other evidence;



- (d) The influences of stigma, shame, fear of rejection by family and community, which may also inhibit disclosure. Stigma may also account for the lack of documentary or other evidence, including under-reporting of incidents of violence, and limits on their inclusion in country of origin information (COI);
- (e) the influence on knowledge, memory, behaviour and testimony of aspects of the applicant's background, such as age, culture, education, gender, sexual orientation and/or gender identity, profession, socio-economic status, religion, values, and past experiences.

These factors and circumstances span many disciplinary fields, including neurobiology, psychology, gender and cultural studies, anthropology and sociology. It is, therefore, necessary that the whole credibility assessment is duly informed by the substantial body of relevant empirical evidence that exists in these fields.

UNHCR's research has shown that international and national jurisprudence, as well as judicial guidance, recognize that the need to cope with traumatic experiences affects memory. These also acknowledge the consequent impact on an applicant's testimony and behaviour, even with regard to inconsistencies about material facts. Fear or lack of trust in state authorities can also explain a failure to disclose some evidence in an interview. Of note in this connection is the fact that the ICTR has recognized that the cultural backgrounds of witnesses may mean that they experience difficulty specifying dates, times, distances, and locations.

UNHCR's review of guidance in the three Member States of focus revealed some helpful references to the need to consider the individual and contextual circumstances of the applicant. However, in general terms, UNHCR's research suggested that the credibility assessment undertaken by determining authorities may

not be sufficiently informed by and/or in line with the substantial body of relevant empirical scientific evidence in the above-mentioned fields. UNHCR's research revealed that often written internal notes and decisions in individual cases did not acknowledge relevant individual and contextual circumstances that might affect aspects of the credibility assessment. As such, it was not always clear from the case-file materials whether the applicant's individual and contextual circumstances had been taken into account as relevant by the decision-maker. This, of course, does not necessarily mean that such factors were not taken into consideration. However, the absence of such references and the nature of conclusions drawn by decision-makers often gave the impression that such factors had not been taken into account and/or decision-makers lacked an informed understanding of the impact of such factors.

## Factors affecting the decision-maker

Just as consideration of the individual and contextual circumstances of the applicant are crucial to the credibility assessment, so too is an awareness on the part of the decision-maker of the influence of his or her own individual and contextual circumstances on the decision-making process. The need for objectivity and impartiality requires decision-makers to be aware of the extent to which their own thought processes, emotional and physical state, individual background, values and beliefs, and life experiences may influence their decision-making.

One way in which decisions can be inappropriately subjective is through the unacknowledged influence of the decision-maker's own background and culture. It has been suggested that decision-makers necessarily approach their tasks from the perspective of their own background and life experiences. However, such an approach may fail to take into account the different life experiences, personal circumstances and psychological responses of the applicant, and the extraordinary circumstances from which applicants have fled and are unwilling to return.

Societal, political and institutional pressure to prevent abuse of the asylum system may subconsciously influence the mind-set of the decision-maker, so that decision-makers approach the credibility assessment with scepticism and disbelief. UNHCR found that although decision-makers expressed their intention to start the examination with an open mind, some also expressed the view that the majority of asylum applicants are economic migrants.

Scepticism or a refusal mind-set may prejudice and distort the gathering of facts and the assessment of the applicant's statements. The decision-maker's task is to uphold fundamental human rights and their objective is one of protection; to identify applicants who are in need of international protection. Determining authorities can assist individual decision-makers in this task by taking appropriate steps to ensure an institutional mind-set that is protection-oriented and an institutional culture that is protection-sensitive.

Decision-makers also need to be aware of situations in which their fact-finding, reasoning and decisions are being guided primarily by intuition rather than by consideration of the entirety of the available evidence. Given the repetitive nature of the task, UNHCR's research indicated that there is a risk that decision-makers will tend, consciously or unconsciously, to categorize applications into generic case-profiles with pre-determined assumptions regarding credibility. Of the decision-makers interviewed in one Member State, a majority stated that when they heard similar stories over and over again, they concluded the stories were false.

Previous findings of credibility or non-credibility with regard to similar applications relating to the same country of origin or habitual residence should not result in a predetermined assumption about credibility. Conversely, the fact that one application is substantively different from other applications relating to the same country of origin or habitual residence should also not result in such pre-determined assumptions.

Routine exposure to narratives of torture, violence, inhuman and degrading treatment can also take its psychological toll on examiners. Examiners interviewed by UNHCR testified to the psychological stress of repeatedly listening to and/or reading accounts of claimed persecution. Examiners may suffer psychological distress due to their exposure to such evidence - so-called vicarious trauma - and employ natural coping strategies, which can involuntarily compromise their impartiality. They may find the content of the evidence so horrific that they are tempted to reject it as unimaginable, fabricated and therefore lacking credibility. Disbelief is a very human coping strategy, but it undermines objectivity and impartiality. Emotional detachment may be viewed as essential in maintaining objectivity. However, decision-makers have to be careful that such detachment does not translate into a reluctance to engage with the applicant's narrative, and/or disbelief. UNHCR's research revealed that self-awareness existed among some decision-makers of case-hardening, credibility fatigue and burn-out.

UNHCR's research in the three Member States in the study underlined the importance of decision-makers being self-aware and understanding how their thought processes, individual background and physical and mental state affect their assessments of credibility. Moreover, it underlined the importance of determining authorities having in place adequate and accessible support mechanisms, as well as strategies that address the psychological impact of the decision-makers' tasks. UNHCR's research also highlighted that while jurisprudence and guidance acknowledges the relativity of culture, few court rulings have articulated the impact of the other factors on decision-making. This emerges in contrast to academic research examining those factors.

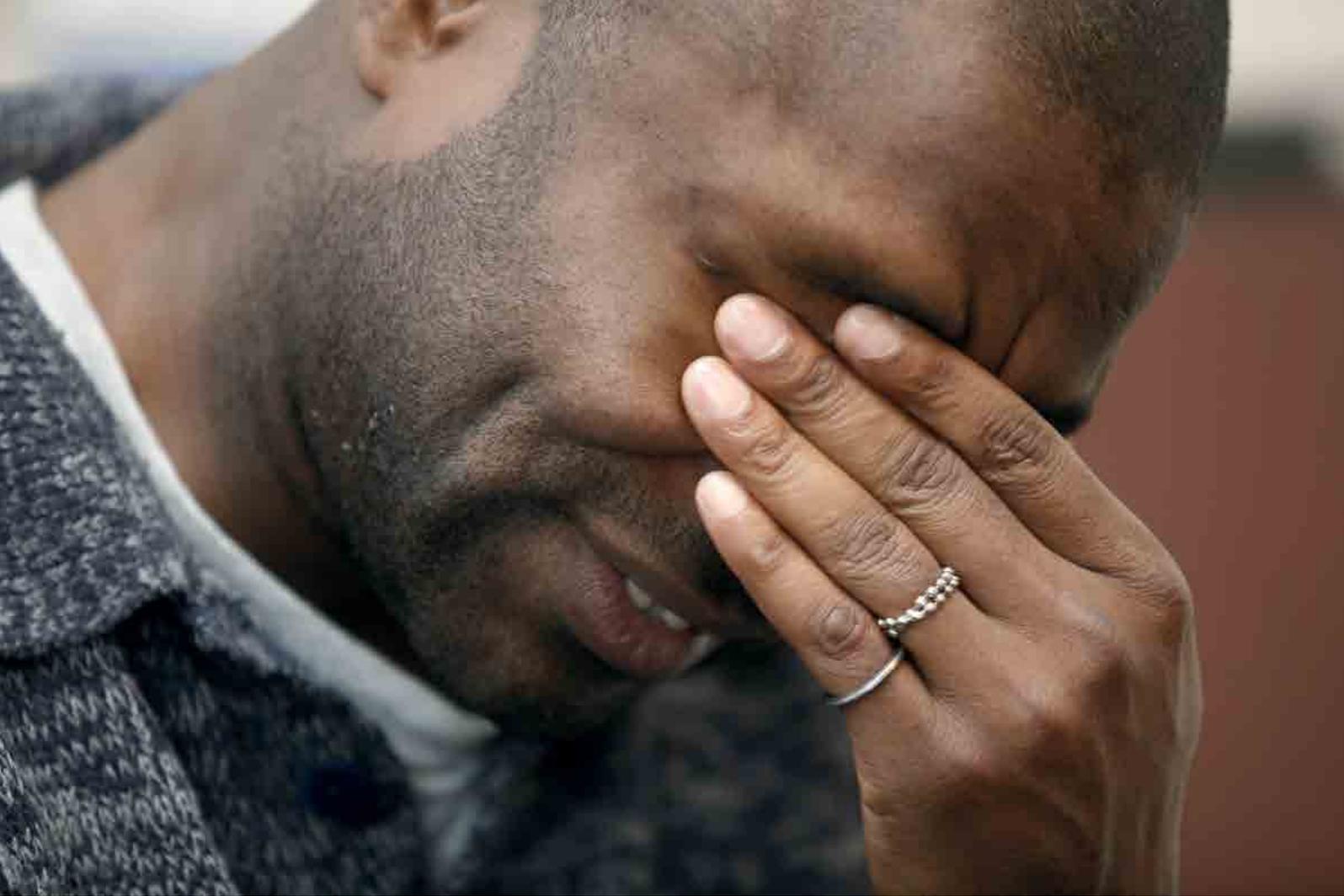
# 4. Gathering the facts

The task of gathering relevant information to substantiate the application and examining it in light of the individual and contextual circumstances of the applicant enables the decision-maker to determine whether and which of the statements and other evidence relating to core elements of the application can be accepted. It is, therefore, essential that as much relevant information as possible is gathered in each case. Both the applicant and the determining authority must cooperate in this process. Cooperation implies, among other things, that the applicant and determining authority work together towards the common goal of gathering as much relevant evidence as possible in order to have, as far as possible, a solid basis upon which to assess the credibility of the asserted material facts and determine the need for international protection.

In accordance with the first sentence of Article 4 (1) QD, “*Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection.*” However, where Member States do consider that it is the duty of the applicant to substantiate the application, this duty rests only ‘in principle’ on the applicant. While the relevant facts will have to be furnished in the first place by the applicant, through the provision of statements and other evidence, the process of gathering information with respect to the application should thereafter be collaborative.

It is important to recall that the first instance determination of eligibility for international protection is not an adversarial process, and there is no subject of dispute between the applicant and the determining authority. Bearing this in mind, in some cases, it may be for the determining authority to gather evidence by its own means, including any evidence that supports the application. This is due to several factors inherent in the asylum process: these are the manifest difficulties for applicants in providing information and supporting their statements with documentary and other evidence; the gravity of the possible consequences of an erroneous determination; the fact that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the decision-maker; the duty of the determining authority to conduct a close and rigorous examination of the application; the requirement that the determining authority’s credibility findings have an evidentiary basis; and the greater resources that will generally be available to the determining authority to gather evidence compared with the applicant.

UNHCR’s research therefore reviewed state law and practice relating to the nature and extent of the applicant’s duty in principle to substantiate the application; the responsibilities of the determining authority to facilitate and assist the applicant in the substantiation of the application and to gather evidence by its own means including, where necessary, in support of the application; and how these relate to the credibility assessment.



## The applicant's duty in principle to substantiate the application

### What needs to be submitted by the applicant to substantiate the application?

Article 4 (2) QD lists the relevant elements required for the substantiation of an application, which “*consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.*”

A brief observation should be made here regarding the inclusion of ‘travel route’ among the issues listed in Article 4 (2) QD. The travel route taken by the applicant may be pertinent to the determining authority's consideration of the applicability of *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* (the Dublin Regulation), and to the admissibility of the application pursuant to the Asylum Procedures Directive. Moreover, Member States have a broader interest in gathering information regarding migration routes. UNHCR considers, however, that the travel route is rarely a fact that is material for the examination of an application for international protection. Nevertheless, UNHCR's research showed that the applicant's statements and other evidence relating to the travel route have a significant bearing on the way credibility is assessed in the practice of some Member States.

It is vital to emphasize that the applicant's duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every relevant fact asserted by the applicant. The duty in principle on the applicant to adduce evidence in support of an application should be approached in the light of the applicant's individual and contextual circumstances. Some asserted facts are not susceptible to support from documentary or other evidence; the applicant may have arrived with the barest necessities and without documentary or other evidence; the applicant's individual and contextual circumstances (including circumstances in the country of origin, or place of habitual residence) may make it impossible to obtain relevant documentary or other evidence; and scarcity of independent evidence confirming or supporting an applicant's testimony is common. Therefore, an applicant is only required to make an effort to support his or her statements by any available evidence; and the applicant only needs to adduce evidence to the extent practically possible. The applicant's statements, which in any case are always a major source of evidence, may be the only evidence that the applicant is able to furnish. Moreover, the applicant's statements alone may suffice to substantiate the application.

With regard to the credibility assessment, a decision-maker cannot disbelieve the statements of an applicant merely because he or she furnishes no documentary or other evidence to confirm or support all or parts of his or her testimony. Pursuant to Article 4 (5) (a) and (b) QD, where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when, *inter alia*:

- (a) *“the applicant has made a genuine effort to substantiate his application;*
- (b) *all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements.”*

UNHCR's research highlighted the need to stress that the applicant's statements constitute evidence capable of substantiating the application. Evidence may be oral or documentary. It includes the statements of the applicant as well as any other oral evidence provided by experts, family members and other witnesses. Evidence may also be documentary, including written, graphic, digital, and visual materials. In this sense, evidence may also encompass country of origin information (COI), exhibits such as physical objects and bodily scarring as well as audio and visual recordings.

The research revealed some good practice where the applicant's statements were clearly regarded as evidence capable of substantiating the application and were accordingly assessed for credibility. However, some written decisions appeared indicative of a lack of consideration of the applicant's statements as evidence and/or recognition that each asserted material fact does not necessarily need to be supported by documentary or other evidence. Indeed, in a number of cases reviewed, the reasoning in written decisions implied that applicants were expected to corroborate asserted material facts with documentary or other evidence, and that their statements were not considered as evidence.

Some applicants may be placed in a 'catch-22' situation whereby it may be considered adverse to their case if they provide no documentary evidence. They may, however, also be disadvantaged if they provide documentary evidence in support of some of the facts of the application, as they are then expected to provide evidence in support of all the asserted facts. In some cases reviewed, the decision-maker concluded that, since the applicant had been able to provide *some* evidence in support of particular aspects of his or her claim, it could be expected that she should have been able to produce documentary evidence to support *all* (or at least some other) aspects of the claim. In these cases, the applicant's inability to produce further documentary evidence in support of a material fact was considered to undermine the credibility of the asserted fact. Moreover, on the whole, decision-makers in these cases did not request an explanation from the applicant for the lack of specific documentary evidence. Therefore, they appeared to base their finding on a non-evidence based assumption that the specific evidence was available, but not furnished by the applicant.

## Documentation and other evidence ‘at the applicant’s disposal’

Article 4 (1) QD provides that Member States may consider it the duty of the applicant to submit ‘*all the documentation at the applicant’s disposal*’. This research sought to understand what interpretation is given to this term, as well as to the term ‘*satisfactory explanation*’ (for a lack of relevant elements) used in Article 4 (5) (b) QD. In essence, a finding that an explanation for a lack of evidence is not satisfactory should mean that the decision-maker considers that the evidence is at the applicant’s disposal, but has not been submitted. Such a finding may be considered to have a bearing on the credibility of the applicant’s statements.

UNHCR’s research confirmed that ‘*at the applicant’s disposal*’ is understood to mean more than documentation in the applicant’s possession. For example, both Dutch legislation and UK policy guidance indicate that evidence is considered to be at the applicant’s disposal when the applicant may reasonably be expected to be able to obtain it. In one Member State, applicants are required to do everything *in their power* to gather evidence in support of the application, if need be with the assistance of family members or other contacts.

However, UNHCR’s research revealed that some determining authorities may have onerous expectations regarding what documentary or other evidence applicants should possess, and/or can be reasonably expected to obtain and submit in support of their applications. These high expectations seem to stem, in part, from unfounded theories or preconceptions about human behaviour and interaction. They seem to assume that those in need of international protection, for example, will:

- (a) know in advance of flight from the country of origin, or place of habitual residence, that documentary or other evidence will be relevant if he or she applies for international protection in another country;
- (b) know what specific documentary evidence will be relevant, and take this evidence with them on the journey to the putative country of asylum, looking after it carefully and keeping it in their possession at all times, regardless of the needs of family remaining in the country of origin, the hazards of the journey or advice or instructions from others;
- (c) not place trust in the advice of agents or others - but will place trust in national authorities;
- (d) not willingly dispose of or surrender any documentary or other evidence unless subject to coercion or force.

Such assumptions raise empirical questions about what people actually do know and how they actually behave when fleeing in fear, as well as how they decide who to trust.

Unreasonably high expectations on the applicant to submit documentary evidence may unwittingly encourage applicants to submit documentary evidence, including false documents, in support of all asserted material facts at all costs. UNHCR’s research highlighted the importance of awareness on the part of decision-makers that the applicant’s statements constitute evidence capable of substantiating the application. It also demonstrated the importance of determining whether potentially supporting documentation and other evidence is at the applicant’s disposal, given his or her individual and contextual circumstances. Determining whether an explanation is satisfactory, in effect, means assessing the credibility of any explanation offered in accordance with the credibility indicators discussed in Chapter 5 of the report, and in light of the individual and contextual circumstances of the applicant.

## Duty of the applicant to substantiate the application ‘as soon as possible’

The first sentence of Article 4 (1) QD states 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 for international protection*” (emphasis added). It is widely recognized that corroboration is one of the most effective means of supporting the credibility of an applicant’s statements. In the interests of ensuring a correct credibility assessment, it is therefore important that determining authorities offer applicants sufficient time to obtain documentary or other evidence, when this can reasonably be obtained and could assist in the assessment of credibility.

The interpretation of ‘*as soon as possible*’ needs to be informed by an understanding of the applicant’s individual and contextual circumstances – including those that may inhibit disclosure of information and affect the possibility of obtaining supporting documentary and other evidence. This includes taking into account circumstances in the country of origin or place of habitual residence. The term ‘*as soon as possible*’ should also be interpreted with reference to the point in time at which the applicant is informed in a language and a manner he or she understands of his or her duty to substantiate the application and how to fulfil this obligation; and also, if relevant, the point in time when he or she is requested to obtain any further specific or additional evidence.

The three Member States of focus in this research consider that it is the duty of the applicant to submit evidence ‘as soon as possible’. What this means in practice is intrinsically linked to the time-frames and arrangements in national procedures. As these vary from state to state, from procedure to procedure, and from decision-maker to decision-maker (who may or may not wish to exercise discretion and flexibility), some applicants inevitably have greater time than others within which to substantiate their applications. The extent of this variation emerges in looking at the regular procedure in the three Member States that participated in this research project. While some applicants had three months or more within which to substantiate their applications, other applicants were required to substantiate their applications within just a few weeks of registration of the application. In one Member State, in particular, stakeholders expressed concern regarding the time pressures within the procedure and considered that this negatively affected the credibility assessment.

With regard to the stipulated timelines for the submission of evidence, UNHCR observed that in all three Member States surveyed, the opportunity exists for some flexibility at the discretion of the decision-maker, although the exercise of such discretion may be circumscribed by law. In some cases flexibility was shown, while in other cases, the decision-maker did not agree to an extended period to await relevant documentary evidence. Of note in this context is the ruling by the Dutch Council of State that the procedure does not need to be extended in order to await documentary evidence, which, according to the applicant, is due to arrive shortly.

The impact of the absence of these documents had on the credibility assessment could not be determined in all cases. In one case, however, the applicant was informed that when the documentary evidence arrived, he or she should submit it on appeal. In this regard, it should be noted that Canadian guidance states that if the adjudicator does not grant the applicant a reasonable opportunity to adduce evidence or denies the applicant the opportunity to adduce evidence, it should not then rely upon the lack of such evidence as indicating non-credibility.

In one Member State, the short time-frames for submission of evidence have additional implications for the credibility assessment. If the applicant is unable, within due time, to produce a travel document, identity card or any other document that the determining authority considers necessary, this may be considered as undermining the credibility of the applicant’s statements in advance - unless the applicant can make a plausible case that he or she is not accountable for the absence of the document(s). The applicant needs to be more convincing in his or her statements in such cases than in those where the applicant has submitted relevant documents.



In addition, although information and documentary or other evidence may be submitted at any point up until a final decision is taken, in certain circumstances, even if it is submitted within the deadlines, it may be considered by the determining authority to have been submitted ‘too late’ and be disregarded. ‘Late’ submission of evidence may also be considered to undermine credibility of the applicant’s statements if she or he does not provide what is deemed a satisfactory explanation for the failure to disclose or submit the evidence earlier. In this regard, in the Netherlands, documentary evidence that is obtained and submitted during the appeal stage may be considered inadmissible if it is considered that the evidence could have been obtained and submitted during the first instance procedure.

UNHCR understands that determining authorities and decision-makers may work under political and institutional imperatives to meet targets for decision-making. However, expediency should not be achieved at the expense of fairness, justice and fundamental human rights. The credibility assessment is, by nature, extremely difficult and challenging, and the task is seriously hampered when time-frames are so short and/or procedures are such that they do not allow the applicant to present his or her case as fully as possible. This is so also where they do not allow the applicant to obtain documentary or other evidence that would support an asserted material fact. In the interests of ensuring a correct credibility assessment, it is important that determining authorities have as much available and relevant information as possible. Flexibility is in the interests both of the determining authority and the applicant with regard to time-frames. It is vital that the procedure allows and policy guidance instructs decision-makers to take into account the individual and contextual circumstances of the applicant, including the means at their disposal to obtain documentary or other evidence and translations, where required.

## The duty of the determining authority with regard to substantiation of the application

The second sentence of Article 4 (1) QD states that, “*in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.*” The CJEU has stated that “*the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.*”

With regards to the substantiation of the application, the determining authority has a duty to:

- (a) provide information and guidance to the applicant on his or her duty to substantiate the application, and how to discharge this duty;
- (b) provide guidance through the use of appropriate questioning during the interview;
- (c) provide the applicant with an opportunity to clarify any potential adverse credibility findings; and
- (d) use all means at its disposal to gather relevant evidence bearing on the application, including where necessary in support of the application, and base the credibility assessment on all the materials submitted by the applicant and gathered by its own means.

### Provision of information and guidance to the applicant

The applicant cannot be expected to know that he or she has a duty to substantiate the application, how to discharge this duty, and what facts and type of documentary or other evidence may be relevant. The determining authority, therefore, has a duty to ensure that the applicant is assisted in this regard. In the three Member States surveyed, applicants are initially and generally informed that it is their duty to submit elements to substantiate the application via information brochures. Applicants are further informed of this duty by legal advisers and/or by the interviewer at the outset of interviews. In two Member States, the brochures also indicated some of the documentary or other evidence that might be useful to support the application. In one Member State, if an applicant has been identified as illiterate, the content of the information brochure should also be explained to him or her at the personal interview.

UNHCR observed some examples of good guidance where the interviewer is encouraged to invite the applicant to submit specific documentary evidence. However, UNHCR also reviewed a number of cases in which an absence of specific documentary evidence was considered to undermine the credibility of an asserted material fact, even though other supporting documentary evidence bearing on the fact had been submitted and the applicant had neither been advised to submit that specific evidence, nor asked to explain its absence.

UNHCR’s research indicated that documentary or other evidence that may assist the credibility assessment may not be submitted by the applicant simply because he or she was not aware that it would support his or her application. This may affect the integrity of the credibility assessment. Pursuant to the duty of cooperation and the common aim to gather as much relevant evidence as possible as a basis for the credibility assessment, it is in the interests both of the Member State and the applicant that the applicant is guided on what information and type of documentary or other evidence, if available, might assist to support his or her application.

## Provision of guidance through the use of appropriate questioning during the interview

UNHCR found that generally questioning was coherent. A technique known as ‘signposting’ to indicate shifts in the focus of the questioning was observed. For example: “*Now I’m going to ask you some questions about ...*”. This may usefully be considered by decision-makers to avoid changing abruptly the focus of the questioning from one question to the next, an approach that may result in inconsistencies in the applicant’s statements.

UNHCR’s research also indicated that in a number of cases, the interviewing techniques sufficed to elicit the relevant facts in sufficient detail to provide a basis for the credibility assessment. However, there were some notable exceptions. For example, UNHCR observed cases in which a lack of detail was used as an indicator of non-credibility, notwithstanding the fact that questioning during the personal interview was not tailored to elicit the relevant detail.

UNHCR observed interviews and reviewed interview records that suggested that some of the questioning was also non-intimidating and sensitive. Presenting a non-confrontational, comfortable and non-threatening interview space may make the disclosure of material facts easier for both the applicant and decision-maker. Moreover, the interviewer should remain impartial and objective throughout the interview, both in his or her verbal and non-verbal communication. However, UNHCR also observed in some cases that questions (and statements) were laden with the views of the interviewer, and appeared to express disbelief, impliedly or overt, during the interview. Such expressions of disbelief create an environment of incredulity, which may inhibit further disclosure of relevant information by the applicant.

The personal interview is an essential component of the credibility assessment. It should provide the opportunity for the applicant to present all the necessary information related to the core elements of the claim, and the decision-maker to probe the credibility of the asserted material facts. Contradictions, inconsistencies, a lack of detail and omissions in the applicant’s statements may be indicative of shortcomings in the conduct and environment of the interview rather than indicative of the non-credibility of the applicant. UNHCR’s research underlined the need to emphasize that the credibility of asserted facts should not be impugned on grounds of a lack of detail if questioning during the interview was not tailored to elicit details. This also applies if the conduct and/or environment of the interview otherwise hampered the disclosure of relevant details.

## Use of ‘general knowledge’ questions to probe credibility

The use of ‘general knowledge’ questions to probe the credibility of an asserted material fact appeared to be common in the three Member States surveyed. UNHCR’s research revealed some variation across the three Member States of focus with regard to the circumstances in which ‘general knowledge’ questions are used. In one Member State, such questions appeared to be posed primarily where there existed doubts pertaining to the applicant’s asserted origin, ethnicity, or religion. However, in another Member State, such questioning clearly did not constitute a ‘fall-back’ method of probing credibility in the absence of other corroborative evidence. Instead, an applicant could be questioned at length to determine his or her knowledge of the asserted country and region of origin, notwithstanding the fact that valid identification documents attesting to origin were submitted. Indeed, UNHCR’s research revealed that documentary or other evidence submitted in support of an asserted country or region of origin may not be assessed if it is considered, based on the applicant’s responses to questions assessing his or her general knowledge of the country or region, that his or her asserted origin is not credible. In such cases, questioning to assess the applicant’s general knowledge constituted the sole method of probing the credibility of the asserted fact.

In one Member State, in particular, UNHCR observed that a significant proportion of the time allocated for the personal interview could be dedicated to such questioning, in cases concerning applicants who asserted to originate from Afghanistan, Iraq, or Somalia. These interviews were generally dominated by closed questions probing the applicant’s general knowledge of the alleged country and/or region of origin,

recent residency, ethnicity, and religion/religious conversion. Limited information regarding other material facts was elicited.

Likewise, in one Member State of focus, where a claim relates to the applicant's alleged sexual orientation and/or gender identity, the applicant may be questioned on his or her knowledge of the situation of LGBTI persons in the Member State as well as on legal provisions concerning LGBTI persons in the country of origin. This raises the question about whether such questioning is the most appropriate way to probe the credibility of asserted facts relating to, for example, religious conversion, sexual orientation and/or gender identity. Such questioning runs the risk of drawing on subjective stereotyping and unfounded assumptions about human behaviour, interaction and knowledge.

An over-reliance on such questioning becomes problematic when it takes place at the expense of due consideration of other information that may confirm or support the applicant's account and/or eliciting information on the relevant facts. The credibility assessment must be based on the entirety of the available relevant information as submitted by the applicant and as gathered by the determining authority by its own means. The assessment of the credibility of an asserted fact is flawed if it is carried out solely with reference to an assessment of the applicant's responses to 'general knowledge' questions. This is the case if it ignores, for instance, reliable documentary or other evidence that bears on the fact.

UNHCR noted that occasionally, applicants were asked an open-ended question requiring them to describe a subject, their own words or were shown an image, which they were asked to explain in a free narrative. More commonly, applicants were asked closed questions requiring a specific answer. Questions often required a level of knowledge and capacity of recall above and beyond what might be considered reasonable. Decision-makers must be careful to ensure that they do not have unreasonable expectations of what applicants should ordinarily know or remember. An awareness of the functioning and frailties of human memory is, therefore, essential. It is important to stress that the assessment of credibility should not be reduced to a test of the applicant's memory.

Both the questions put to applicants as well as the assessment of their responses must fully take into account the individual and contextual circumstances of the applicant. UNHCR noted that while guidance in the three Member States of focus did not highlight key considerations regarding human memory, the guidance helpfully confirmed the need to take into account other individual and contextual circumstances. In this regard, UNHCR observed some examples of good practice. However, in a significant number of cases, it did not appear that the applicant's individual and contextual circumstances were taken into account in devising the questions and/or in the assessment of the applicant's responses. As a result, responses to the questions were considered to constitute an unreliable indicator of credibility.

### **Providing the applicant with an opportunity to clarify potential adverse credibility findings**

It is very possible that a perceived lack of detail, omission, inconsistency or implausibility in the information provided by the applicant is not in fact real, but may be legitimately explained. As the credibility assessment should be based, as far as possible, on reliable evidence, it is of crucial importance that the determining authority affords applicants a reasonable opportunity to clarify issues that may potentially lead to adverse credibility findings. Moreover, any explanations offered by the applicant should be duly considered before a final decision is taken on the application.

UNHCR's research indicated that the extent to which applicants are afforded such an opportunity varies from Member State to Member State, and from application to application. Guidance in all three Member States surveyed encourages interviewers to raise apparent adverse credibility indications during the personal interview. In some Member States, this may not be a requirement encompassing all significant adverse credibility indications.

UNHCR's research revealed that a negative decision may result from a finding of non-credibility based on an inconsistency or implausibility that was not raised with the applicant. UNHCR observed a significant number of decisions in which negative credibility findings were based on inconsistencies and discrepancies that the applicant had not been given the opportunity to address during the procedure. As such, the applicant was not able to provide an explanation or mitigating circumstance before a final decision was taken.

UNHCR welcomes national guidance, which requires interviewers to raise matters that may be the source of adverse credibility findings during the personal interview. However, the examiner may only become aware of a lack of detail, an inconsistency and/or implausibility after the personal interview. The failure on the part of interviewers to identify inconsistencies, discrepancies and implausibilities at interview and to put them all to the applicant may be due to insufficient time for, or poor, preparation; a lack of focus on the details of the applicant's account during the interview; and/or a tendency to defer identification of adverse credibility indicators until after the interview. It may also be because the examiner is able more thoroughly to scrutinize the applicant's statements and other evidence after the personal interview; or that the applicant's statements appear to run counter to evidence obtained after the personal interview, such as COI, the results from analyses of language and/or documentation, etc.

None of the Member States surveyed in this research have legal provisions precluding the conduct of a further personal interview. However, this research indicated that a second personal interview is rarely convened to give the applicant the opportunity to clarify apparent and significant adverse credibility findings and/or provide additional details and missing information.

In the Netherlands, legislation and practice afford the applicant an opportunity to address issues that may be the source of potentially adverse credibility findings when the determining authority is minded to reject the application for international protection. As a matter of procedure, the applicant receives the 'intended decision.' Where the decision-maker sets out all the potentially significant adverse credibility findings in the intended decision, the applicant has the opportunity to comment on these adverse credibility findings before a final decision is taken.

UNHCR understands that Member States are mindful of the time and financial resources required to conduct the examination of applications for international protection. However, it is in the interests both of applicants and Member States to ensure that first instance decision-making is fair, just and that fundamental human rights are upheld. This may require determining authorities to offer a further personal interview or otherwise provide a means for applicants to explain apparent indications of non-credibility before a final decision is made.

### **The determining authority's duty to gather evidence bearing on the application by its own means**

The duty to submit elements in support of an application for international protection lies in principle with the applicant, but it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Moreover, due to the individual and contextual circumstances of certain applicants, the determining authority may need to assume greater responsibility to gather evidence with respect to the application, through its own means. Case law of the European Court of Human Rights has established that it is the duty of national authorities to conduct a thorough and rigorous assessment in order to dispel any doubt regarding the credibility of asserted facts, given the importance of Article 3 and the irreversible nature of the harm in case of the realization of the risk of ill-treatment. This may require the national authorities to take proactive steps to obtain evidence, which includes but is not limited to COI, expert evidence, witness statements or other information from reliable sources.

The need to gather relevant COI is recognized in the laws and guidance of the three Member States surveyed. In general, there was evidence of awareness among decision-makers of the need to gather COI. However, UNHCR observed that in some cases, no COI was referred to or included in the case file by the decision-maker, beyond the information obtained from the applicant, when relevant COI was available. In some

cases, only COI supporting the decision-maker's credibility findings was added to the case file. There was also evidence that some decision-makers did not consider the available and relevant COI in light of the individual material facts. Often COI was not referred to with regard to the credibility of specific material facts, but instead was cited in general and standardized terms. Finally, there was also evidence from some case files that COI may be used selectively to support adverse credibility findings.

UNHCR's research also indicated notable variations between the three Member States with regards to the gathering of other evidence such as expert evidence (for example, document verification, language analysis etc.) or specific information. Where such an opportunity existed, UNHCR noted that in some cases decision-makers took steps to obtain expert or specific evidence that supported the application. In other, apparently similar cases, by contrast, such steps were not taken on the grounds that it was the duty of the applicant to adduce the evidence.

UNHCR's research indicated significant variations in the extent to which decision-makers gather evidence by their own means. It is clear that the quality of the credibility assessment is affected by the extent to which the determining authority fulfils its duty objectively and impartially to gather evidence bearing upon asserted material facts by its own means. The determining authority must ensure that it gathers any available evidence that might confirm (and not just refute) the facts or the credibility of the applicant's statements. A failure to gather specific or general information or expert evidence bearing on a material fact, when this can be done, may be at odds with the requirement of close and rigorous scrutiny, and undermines the validity of the credibility assessment.

## **Basing the credibility assessment on the entire evidence**

The credibility assessment should be based on the entirety of the available relevant evidence as submitted by the applicant and gathered by the determining authority by its own means. The assessment of the credibility of a presented fact is flawed if, for example, it is carried out solely with reference to an assessment of the applicant's statements, and ignores available reliable documentary or other evidence bearing on the fact. Similarly, the reliability of the documentary evidence can only be determined in light of all available evidence.

It was sometimes difficult to deduce with certainty from the review of case files whether the credibility assessment had been conducted in the light of all available evidence relevant to the application. Some internal notes and written decisions did not mention whether specific documentary or other evidence submitted by the applicant had been taken into account or not.

However, UNHCR's review of case files highlighted a number of cases in which it appeared that the credibility assessment was, or may have been, based on only a portion of the available relevant evidence. In one Member State, UNHCR observed that although the written decisions referred to all the documentary or other evidence adduced by the applicant, evidence submitted in support of an asserted material fact was often not assessed. This was done on the basis that the applicant's statements alone were considered credible (or not credible). Rather than assessing the documentary and other evidence together with the oral statements and reaching a credibility conclusion on the basis of all the available evidence concerning the fact; non-credibility findings were sometimes based solely on the oral evidence, and this finding was given as the reason for not assessing the other available evidence. Written decisions often stated that submitted documentation was accorded no value because it had not been supported by credible statements.

UNHCR's research included cases where the applicant's oral evidence concerning his or her country of origin, or place of habitual residence, and/or recent stay in a country, was determined not to be credible. In some such cases, not only was documentary evidence not taken into account but the credibility of other asserted material facts relating to that country of origin and/or relating to the period of time in which the applicant claimed to be in the country of origin was considered not credible. The finding of non-credibility with regard to the applicant's country of origin, and/or recent stay, may be based solely on the applicant's responses to questioning regarding his or her knowledge of the country of origin. This may occur notwithstanding the submission of documentary evidence in support of the asserted material fact.

UNHCR also reviewed a number of decisions relating to applicants who claimed to be from Afghanistan, which stated that documentary evidence submitted by the applicant had been given no probative value due to COI indicating extensive corruption and the availability of forged documents. Thus, decision-makers may have formed the impression that all documents submitted by applicants from those countries were forged, or obtained through corruption. As a result, they were given no probative value and discounted from the assessment of credibility, without further investigation.

Decision-makers should be cautious in considering dismissal of documentary evidence on the basis of COI of a general nature. While there may be widespread corruption and availability of fraudulent documents in a particular country, this does not mean that documentation submitted by every applicant is necessarily forged or has been obtained through corruption. Dismissal of documentary evidence as non-probative without verifying its authenticity, when this would be easy to do, may not satisfy the duty of close and rigorous scrutiny borne by national authorities.

Further, UNHCR's research indicated that some decision-makers may not understand fully how to incorporate available documentary or other evidence into the credibility assessment of an individual material fact. In one Member State, many cases showed that the decision-makers considered documentary evidence in isolation from the material fact to which it related.

UNHCR's research indicated that in a significant number of cases, the credibility assessment may not have been based on the entirety of the relevant available evidence. In particular, the research found that in a number of cases, the credibility assessment appeared to be based primarily on an assessment of the applicant's responses to 'general knowledge' questions, without taking into consideration relevant documentary and other evidence submitted. UNHCR reiterates that the assessment of the credibility of asserted material facts is likely to be flawed if it is based on a portion of the available evidence relating to a particular fact, rather than on the entirety of the available evidence.

# 5. Credibility indicators

There is no infallible and fully objective means to determine whether an applicant's statements are genuine. However, international and national jurisdictions have utilized credibility indicators against which the applicant's statements and any other evidence submitted by the applicant are assessed. These have served to promote an effective and structured approach, and to reduce the scope for subjectivity in assessing the credibility of the material facts presented by the applicant.

UNHCR's research confirmed that a range of credibility indicators are relied upon by determining authorities in the three Member States surveyed. This research has identified that the following credibility indicators were most commonly used to guide decision-makers in deciding whether to accept an asserted material fact:

- (a) sufficiency of detail and specificity;
- (b) internal consistency of the oral and/or written material facts asserted by the applicant (including the applicant's statements and any documentary or other evidence submitted by the applicant);
- (c) consistency of the applicant's statements with information provided by any family members and/or other witnesses;
- (d) consistency of the applicant's statements with available specific and general information, including country of origin information (COI), relevant to the applicant's case;
- (e) plausibility; and
- (f) demeanour.

The limitations of demeanour as an indicator of credibility are set out below.

In working with credibility indicators, it is essential to note that no single credibility indicator is a certain determinant of credibility or non-credibility.

## Sufficiency of details and specificity

This indicator requires the decision-maker to assess whether the level and nature of the detail provided by the applicant reflects what would reasonably be expected from someone with the claimed individual and contextual circumstances of the applicant, who is relating a genuine personal experience. The assumption underlying this indicator is that a person who is relating a lived experience will be able to recall and recount the experience in detail, including, for example, sensory details of an event, such as what they saw, heard, thought or felt. It is expected that this recall will be greater than for someone who has not had this experience. This then translates into the assumption that vagueness, brevity or an inability to provide information with regard to asserted material facts may, when the individual and contextual circumstances of the applicant have appropriately been taken into account, be considered to cast doubt on the credibility of the asserted facts.



In the Netherlands, policy guidance explicitly states that in assessing whether the applicant's statements are credible, it should be determined, among other things, whether the applicant answered questions as fully as possible and can provide sufficient information that he or she should reasonably be able to give on relevant events and circumstances. The guidance further states that it may be concluded that the statements are not considered consistent and plausible if the applicant makes vague and short statements. Similarly, UK policy guidance states that the level of detail with which an applicant sets out his or her claim is a factor that may influence the assessment of internal credibility. The UK guidance usefully highlights that decision-makers should be aware of any mitigating reasons why an applicant is unable to provide detail, or for delays in providing details of material facts.

UNHCR's review of case files in the three EU Member States of focus confirmed that sufficiency of detail and specificity is used in practice as an indicator of the credibility of applicants' statements.

## Internal consistency of the oral and/or written material facts asserted by the applicant

There is no agreed definition of the term ‘consistency’. It is understood to comprise a lack of discrepancies, contradictions, and variations in the material facts asserted by the applicant. The use of the indicator ‘consistency’ is based on an assumption that a person who is lying is likely to be inconsistent in his or her testimony, presumably because it is considered difficult to remember and sustain a fabricated story; and/or when challenged, it is assumed that individuals who are not telling the truth try to conceal their inconsistencies by altering the facts. The converse supposition appears to be that if applicants actually experienced the events they recount, and are truthful in their statements, then they will broadly be able to recall these events and related facts accurately and consistently.

‘Internal’ consistency relates to consistency in the material facts asserted by the applicant:

- (a) within an interview or within a written statement submitted to the determining authority;
- (b) as between earlier and later written and/or oral statements made to the determining authority;
- (c) as between written and/or oral statements made by the applicant, and documentary or other evidence submitted by the applicant to the determining authority.

Guidance in the Netherlands and the UK provides that ‘internal consistency’ is considered an indicator of credibility. Consistency is also referred to as a possible indicator of credibility by the ECtHR, CAT, the international criminal tribunals, the EAC and UNHCR.

The inconsistency must be sufficiently serious and relate to facts that are material or central to qualification for international protection. Minor inconsistencies should not generally be seen to undermine the credibility of the asserted fact; it suffices that the core factual submission or the essence of the claim is broadly consistent. This has been recognized repeatedly in international, regional and national jurisprudence. In its review of case files, however, UNHCR noted that minor inconsistencies relating to precise figures, for instance, could be used to reject the core aspects of an applicant’s account.

With regard to consistency with earlier statements, in the Netherlands a distinction is made between statements made to the determining authority and statements made to other authorities. Inconsistency may not be used as an indicator of non-credibility if it relates to inconsistencies between statements made by the applicant during the registration interview with the Royal Netherlands Police and later statements made by the applicant to the determining authority.

UNHCR also observed that in one Member State, the applicant is expected to provide all the relevant facts during the detailed personal interview. The submission of relevant information, either as a correction or addition to the interview transcript or in the opinion on an intended decision, may be considered an indicator of non-credibility. It is vital that decision-makers understand that there are a number of individual and contextual reasons why an applicant may not provide, or may be unable or reluctant to disclose relevant information, during the personal interview. An explanation for non-disclosure should be sought and fully taken into account.

In another Member State, notwithstanding the clear indication that the applicant is not expected to go into detail about the reasons for the claim, UNHCR observed that disclosure during the personal interview of a fact that was not mentioned in the screening interview is often taken to constitute an inconsistency impugning the credibility of the fact.

It is widely recognized that consistency with supporting documentary or other evidence is considered one of the most effective indicators of the credibility of an applicant's testimony. Documentary or other evidence may confirm the applicant's statements so that the relevant asserted facts can be accepted. Alternatively, without confirming the asserted facts, documentary or other evidence may lend support to their credibility. Based on a review of case files in the three Member States, it was observed that consistency of documentary or other evidence submitted by the applicant with the facts asserted by the applicant was considered an indicator of the credibility of the asserted fact. By contrast, an inconsistency was considered indicative of non-credibility.

## **Consistency of the applicant's statements with information provided by family members and/or witnesses**

As part of the credibility assessment, the determining authority may obtain and compare information and evidence provided by any family members and/or witnesses with the statements made by the applicant for international protection. Consistency in the facts asserted by the applicant with any statements made by dependants, other family members or witnesses, may be considered an indicator of credibility. The assumptions underlying this indicator seem to be that the applicant's personal and contextual circumstances can be verified through family members, and that a lived experience can be recalled and recounted in the same way by all those present at the event.

Guidance in both the Netherlands and UK refers to this as an indicator of credibility. As part of the assessment of this indicator, the UK guidance usefully notes that decision-makers should be aware of any mitigating circumstances.

UNHCR's sample of case files included only a small number involving family members. Nonetheless, a review of these case files indicated that, in practice, consistency between the statements of family members is used as an indicator of credibility. At the same time, in one Member State, it was noted that when the applicant's statements were consistent with those of family members or friends, the statements by the family members or friends were not given any value because they were considered to be partial and biased. Yet they *were* taken into account when there were inconsistencies.

Personal interviews of dependants should not be conducted with the aim of establishing contradictions and inconsistencies. In particular, UNHCR cautions against a reliance on the statements of children to undermine the credibility of statements by a parent or parents. If any inconsistencies that are material to the determination of the principal applicant's claim arise during an interview with family members or dependants, the principal applicant should be given the opportunity to clarify these.

## Consistency of the applicant's statements with available specific and general information

This indicator requires that the assessment of the credibility of the material facts that the applicant asserts takes into account what is generally known about the situation in the country of origin or place of habitual residence. It should also consider accurate, objective and time-appropriate COI, as well as any specific information or other expert evidence such as medical, anthropological or language and document verification analysis reports.

This indicator is referenced in the EU asylum *acquis* under the provisions of Article 4 (5) (c) QD. The UNHCR guidance also refers to this indicator. Policy guidance in the UK and the Netherlands also refers to 'external consistency'. The EAC defines this indicator in relation to consistency with COI, known facts and other pieces of evidence provided either by the applicant or the determining authority. It is important to recall in this context that the COI must support the individual, objective and impartial examination of the application. COI must be independent, reliable, objective, obtained from various sources, precise and up-to-date.

The use of COI has been discussed above in relation to the duty of the authority to gather evidence by its own means. In addition, in a small number of cases reviewed, UNHCR noted that decision-makers appeared to conduct their own research without any recorded reference to recommended COI sources. Instead, some relied solely on information from other websites, which may not necessarily meet the well-established criteria for COI.

## Applicability of the credibility indicators and the individual and contextual circumstances of the applicant

Decision-makers must be aware of the assumptions that underlie each indicator, and understand the range of factors and circumstances that can render them inapplicable and/or unreliable in an individual case. As these factors span a range of fields, such as neurobiology, psychology, cultural and gender studies, anthropology and sociology, the use of credibility indicators is most effective when it is informed by the substantial body of relevant empirical evidence that exists in these fields.

Indeed, this evidence suggests that the assumptions underlying these indicators cannot be applied in an unqualified way. An inability to provide detail and inconsistency may simply indicate that the applicant is exhibiting the normal traits of human memory. In other words, a lack of detail or inconsistency may simply reflect how we as humans record, store and retrieve memories, rather than indicating a lack of credibility. Research has showed that a person demonstrates a high degree of consistency when he or she directly contradicts only 20 per cent of his or her previous statements. Based on this evidence, decision-makers should therefore expect to find inconsistencies in an applicant's account. It is, therefore, essential that decision-makers have an appropriate level of understanding about how human beings record, store and retrieve memories, as a number of common assumptions about memory are incorrect.

One of the main findings that emerged from UNHCR's research was that some decision-makers' general expectations regarding what applicants should remember or know may not be sufficiently informed by and/or be in line with existing and relevant empirical scientific evidence. UNHCR noted a tendency for decision-makers to apply the indicators of 'sufficiency of detail' and 'consistency' in absolute terms and in isolation from the individual and contextual circumstances of the applicant.



UNHCR's observation of decisions showed some examples of good practice where such factors were acknowledged in writing by the decision-maker and taken into account in determining the applicability of the indicator. However, this occurred only in a minority of cases. In some cases, relevant factors were acknowledged but discounted as a mitigating circumstance, because of an apparently unfounded assumption regarding the functioning of memory or expected knowledge. More often, it was not clear from the case-file materials whether the applicant's individual and contextual circumstances, including procedural circumstances, had been taken into account by the decision-maker, given the possible impact of relevant circumstances was not acknowledged explicitly. As mentioned previously, this does not necessarily mean that such factors were not taken into consideration. However, the absence of such reference and the nature of the conclusions drawn by the decision-maker often gave an impression that such factors had not been taken into account.

## Plausibility

The meaning to be given to the term '*plausible*' in the context of the credibility assessment lacks clarity. '*Plausibility*' may be considered by some to mean no more than '*credible*'. This in effect nullifies '*plausibility*' as an indicator of credibility. A range of other terms has been utilized in an attempt to capture its meaning, including: '*likelihood*', '*reasonableness*', '*probability*', and '*common sense*'. However, an assessment of whether facts presented by an applicant seem reasonable, likely, or probable, or make common sense, risks becoming intuitive and being based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping, rather than on objective evidence.

A fact is not implausible because it would not occur in an EU Member State or in the personal life of the decision-maker. Nor is a fact implausible simply because it is exceptional or remarkable. As has been widely recognized in jurisprudence, guidance, and academic literature, considerable caution is required when assessing the behaviour, norms, and customs of persons from different cultures, and practices and procedures within their political, justice and social systems. An asserted fact may be wholly plausible when considered in the context of the applicant's gender, age, sexual orientation, gender identity, education, social and cultural background, life experiences, and circumstances in the country of origin or place of habitual residence. Likewise, decision-makers should not be tempted to form a view on the credibility of an applicant's asserted age, ethnicity or sexual orientation based on stereotyping or their physical appearance.

Despite all the cautions regarding the use of '*plausibility*' as an indicator, UNHCR's review of guidance and case files showed extensive reliance thereon. It should be noted that UK law and guidance provide that the indicator '*plausibility*' should be taken into account only at the advanced stage in the procedure at which consideration is given to applying the benefit of the doubt.

UNHCR's research indicated that in only a very small number of cases was a finding of implausibility based on and cited with reference to evidence such as COI. Instead, on the whole, internal notes and written decisions gave the impression that findings of implausibility were based on subjective assumptions, speculation and subjective perceptions. Moreover, it was often not evident from case-file materials that the applicant's individual and contextual circumstances had been taken into account.

A finding of implausibility must be based on reasonably drawn and objectively justifiable inferences. The examiner should not speculate on how events could have or should have unfolded, or how the applicant or a third party ought to have behaved. The decision-maker must give clearly articulated reasons for a finding that an account or fact is not plausible. He or she should ensure that any such conclusion is supported by and referenced to the evidence, stating why any explanation offered by the applicant is considered insufficient to refute the conclusion of an adverse finding on credibility. A decision-maker may err if he or she rejects an application for international protection on grounds of implausibility alone - notwithstanding the fact that the evidence was otherwise internally consistent, and country or other expert evidence did not contradict it.

## Demeanour

The term '*demeanour*' describes the outward behaviour and manner of a person, including his or her manner of acting, expression or reply (for example, hesitant, reticent, evasive, confident, spontaneous, direct etc.), tone of voice, modulation or pace of speech, facial expression, eye contact, emotion, physical posture, and other non-verbal communication.

The use of demeanour as an indicator of credibility appears to be based on an assumption that a certain demeanour is indicative of credibility or non-credibility. However, it is an assumption that is highly flawed. Evidence shows that the demeanour people may consider as clues to deception are unreliable. Looking for behavioural signs of deception may reveal behavioural signs of anxiety, which is clearly problematic

in the context of the asylum procedure. Demeanour is shaped by the individual's personality traits, age, gender, sexual orientation and/or gender identity, maturity, culture, social status, education, psychological and physical state, and their situation within the context of the asylum procedure. A reliance on demeanour overlooks the fact that there is no norm to the way someone tells the truth.

A determination of credibility by reference to demeanour has a subjective basis that will inevitably reflect the views, prejudices, personal life experiences and cultural norms of the decision-maker. As such, there is widespread recognition in jurisprudence, guidance, and academic literature that demeanour is an unreliable indicator of credibility. Nevertheless, there appears to be reluctance among some determining authorities and appellate bodies to abandon demeanour as an indicator.

UNHCR's review of case files in the three Member States surveyed revealed divergent practice. In two Member States, there was no reference to demeanour as an indicator of credibility or non-credibility. In contrast, decision-makers in the other Member State commonly relied on demeanour as an indicator of credibility. For example, spontaneity, outward expression of emotion, calmness, and sobriety were all observed to be considered to indicate credibility.

While an applicant's demeanour may prompt or guide questioning, it is UNHCR's view that it should not be relied upon as an indicator of credibility or non-credibility. Where it is used, UNHCR urges decision-makers to exercise extreme caution, to take fully into account the individual and contextual circumstances of the applicant and to ensure that demeanour is not determinative of non-credibility.

# 6. Assessing the applicant's behaviour

UNHCR encourages a credibility assessment that focuses on the material facts asserted by the applicant and the effective use of credibility indicators to assess the information provided by the applicant. However, UNHCR's research revealed a significant focus in state practice and the EAC on the credibility of the applicant as such. This emerged through reliance on an extensive and non-exhaustive range of behaviours considered potentially damaging to the applicant's personal credibility.

The report outlines what sits behind the requirement in Article 4 (5) (e) QD that the general credibility of the applicant be established. The EAC interprets this concept to mean 'credibility record' of the asylum-seeker. A stand-alone unit of the EAC module on evidence assessment, not explicitly connected to the interpretation of Article 4 (5) (e) QD or the issue, addresses behaviour that may affect the applicant's 'personal credibility'. On this point, it is worth noting that it is not entirely clear whether the concepts of the 'general credibility of the applicant' and the 'personal credibility' of the applicant as espoused by the EAC are related, or whether the EAC is effectively promoting a separate factor in the credibility assessment.

The EAC suggests that eight of the fifteen optional grounds for prioritizing or accelerating the examination of an application, set out in Article 23 (4) APD, can also double as behaviours potentially likely to damage an applicant's credibility in the absence of a reasonable explanation and, by way of example, it lists an additional seven other behaviours.

It is important to stress that Article 23 (4) APD does not provide a legal basis for factors to be taken into account in the credibility assessment. It is UNHCR's view that decision-makers should not refer to Article 23 (4) APD for the purposes of the credibility assessment. Some of the issues covered by Article 23 (4) APD – such as the presentation of false information in support of an application, a failure to provide relevant information and/or other evidence at the applicant's disposal – are considerations that can be taken into account in assessing the sufficiency of detail and consistency of an applicant's account. Where appropriate, they may also be used in assessing whether the applicant has made a genuine effort to substantiate the application. In addition, the issue of whether the applicant has made inconsistent, contradictory, implausible or insufficient representations, as reflected in Article 23 (4) (f) APD, is already the focus of the credibility assessment and also falls within the ambit of Article 4 (5) (c) QD.

The EAC also states that where the applicant has a criminal record for deceit, it may affect his or her personal credibility. The EAC does not cite any legal basis for this. In its research, UNHCR could find no reference to this factor as relevant for the credibility assessment in the three Member States surveyed. Decision-makers should not assume that there is a discernible pattern to behaviour. An applicant may truthfully relate the reasons for an application for international protection, even though he or she may have a criminal record for deceit.

Based on the findings of this research, these behaviours have been grouped in three categories and include:

- 1** Behaviour by the applicant considered indicative of the applicant's lack of fear of persecution or risk of suffering serious harm - and therefore, by implication, considered indicative that the applicant's statements on material facts are not credible. For example:
  - (a) A failure by the applicant to go into hiding upon realization of the risk of harm; or a delay in the applicant's departure from the country of origin.
  - (b) Delay in claiming asylum. This can occur where:
    - i. The applicant has not applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so.
    - ii. The applicant claimed asylum only upon arrest.
    - iii. It is considered that the applicant is making an application merely to delay or frustrate the enforcement of an earlier or imminent decision that would result in his or her removal.
  - (c) Applicant did not apply for asylum in a safe third country.
  - (d) Applicant explicitly or implicitly withdrew an application in a third country before a decision was taken.
  - (e) Applicant previously applied for voluntary return to the country of origin.
  - (f) Applicant failed to attend a scheduled interview or otherwise comply with conditions imposed by the competent authorities (unless he or she had good reason for the failure).
- 2** Behaviour by the applicant in the Member State considered to indicate credibility. This includes, for example, whether an applicant:
  - (a) keeps him or herself informed about the evolution of events occurring in the country of origin;
  - (b) who asserts that he or she is an LGBTI individual, keeps in contact with any alleged partner who remains in the country of origin;
  - (c) who asserts that he or she is an LGBTI individual, informs himself or herself of the situation of LGBTI individuals in the putative country of asylum; and participates in the social life of LGBTI individuals;
  - (d) who claims to adhere to a particular religion, and publicly practises that religion in the putative country of asylum.
- 3** Behaviour considered indicative of the applicant's propensity to deception and dishonesty, and therefore considered indicative of non-credibility, for example:
  - (a) Intentional submission of false information and/or documents as if valid.
  - (b) Filing another application for international protection stating other personal data.
  - (c) Entering the territory of the Member State unlawfully or prolonging his or her stay unlawfully and, without good reason; failure to present himself or herself to the authorities, and/or filing an application for asylum as soon as possible, given the circumstances of his or her entry.
  - (d) Destruction or disposal in bad faith of documentary evidence that would have helped to establish identity or nationality.

These factors, which are taken into account as part of the credibility assessment, may have a significant influence on the outcome. If certain behaviours are found to be present at the outset of the credibility assessment, they may result in the applicant's statements being considered questionable in advance. This may trigger the application of a higher threshold of credibility, which the applicant must satisfy. Some behaviours may be taken into consideration in the application of the principle of the benefit of the doubt, and may result in or contribute to a decision not to grant the benefit of the doubt. In some cases, UNHCR observed that a negative credibility finding based on one of the above-listed behaviours could be considered to damage the overall credibility of the applicant's account.

The following factors were most evident in the cases reviewed by UNHCR:

## Delay in applying for asylum

UNHCR's research showed that some determining authorities expect applicants to apply for international protection at the earliest possible opportunity. A delay in application may be considered indicative of the non-credibility of asserted facts, or may result in an obligation for the applicant to be more convincing than otherwise in his or her statements. Article 4 (5) (d) QD requires the applicant to apply for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so.

The underlying assumption appears to be that a delay in applying for international protection may be indicative of a lack of fear of persecution or risk of suffering serious harm and, therefore, undermines the credibility of the asserted material facts. However, it is clear that an applicant may be a refugee notwithstanding the fact that his or her application for international protection was not lodged at the earliest possible time. Many valid reasons, unrelated to the credibility of the reasons for the application, may explain why an applicant may not immediately engage with state authorities and legal procedures following arrival in a Member State.

The last clause of Article 4 (5) (d) QD requires that decision-makers give the applicant an opportunity to explain the reasons for any delay in applying for international protection. The decision-maker should take into account any explanation offered, bearing in mind the applicant's individual and contextual circumstances. However, UNHCR's research indicated that often explanations offered by the applicant were not considered a good reason for not applying earlier. Moreover, in a number of cases, the delay in applying for asylum was considered to damage the overall credibility of the applicant's claim.

The credibility of an applicant's statements should not be considered undermined merely on the grounds that he or she did not apply for international protection as soon as possible. Neither should a delay in application constitute grounds to increase the threshold of credibility for the applicant. If the application of Article 4 (5) (d) QD is considered, the decision-maker should enquire into the reasons for any apparent delay by offering the applicant the opportunity to explain it. He or she should take any explanation offered by the applicant into account, bearing in mind the applicant's individual and contextual circumstances.



## Applicant did not apply for protection in safe third country

UNHCR's research indicated a variance in state practice in this area. In some states, the fact that an applicant did not apply for protection in a 'safe third country' is not a factor upon which a credibility finding may be based. Indeed, in one of the Member States of focus, a failure to apply for asylum in a third country was not referred to as indicating non-credibility in any of the cases reviewed by UNHCR. However, UNHCR's research revealed that in some other Member States, a failure to apply for international protection in a 'safe third country' may be considered to undermine the applicant's credibility. The underlying assumption appears to be that a failure to apply for asylum in a third country may indicate a lack of fear of persecution or risk of serious harm, and therefore be by implication, indicative of the non-credibility of asserted material facts.

It is UNHCR's view that reference to the concept of 'safe third country' is not appropriate in the credibility assessment. First, there is no obligation in international law for a person to seek international protection at the first effective opportunity. Second, the concept of 'safe third country' has been developed and its application regulated by EU legislation addressing state responsibilities for the determination of asylum applications. The consequence of a 'failure' to apply for asylum in a 'safe third country' is regulated by that legislation. Member States may not be required to examine an application for international protection and an applicant may be sent to a third country for an examination of the merits of the application, if the conditions of, as relevant, the Dublin Regulation and APD are satisfied. To consider instead a 'failure' to apply for asylum in a safe third country as a factor potentially undermining the credibility of the applicant's statements could alter the consequences and result in the asserted material facts not being accepted, and the rejection of the application. Third, a 'failure' to apply for asylum in a safe third country is not necessarily indicative of a lack of fear of persecution and/or risk of serious harm in the country of origin or place of habitual residence. There are many legitimate reasons why an applicant may not apply for international protection in a third country. Reliance upon such a factor in the credibility assessment may result in violation of the principle of *non-refoulement*.

## Applicant's behaviour in the Member State

UNHCR noted that the behaviour of the applicant in the Member State may be subject to scrutiny and certain behaviours considered indicative of either the credibility or non-credibility of asserted facts. For example, in one Member State it was noted that a credible applicant is expected to have made efforts to find out about the evolution of events that prompted the application for protection, and the welfare of friends and family in the country of origin. Moreover, the credibility of an applicant's assertion that he or she is an LGBTI individual may be considered undermined if he or she has not informed him or herself about the situation of LGBTI individuals in the Member State; if he or she does not take active steps to explore his or her sexual identity in the Member State having claimed to have done so in the country of origin; and/or if he or she has not attempted to contact a claimed partner or associate(s) who remain in the country of origin. UNHCR observed that where an applicant was asked to explain why he or she had not taken the action that the decision-maker assumed that he or she should take, the applicant's explanation was often considered unsatisfactory.

In the absence of psychological and anthropological research findings, decision-makers may be relying on assumptions based on their own personal and cultural backgrounds, which may be insufficient to explain the motivations and behaviours of others. The behaviour of the applicant in the putative country of asylum may be an unreliable indicator of the credibility of the applicant's statements as there are a myriad of reasons wholly unrelated to credibility that may account for such behaviour. It is UNHCR's view that the credibility assessment should focus primarily on the statements and other evidence provided by the applicant in relation to the material facts of the claim, rather than on the behaviour of the applicant, particularly on arrival in the putative country of asylum.

## Behaviour considered indicative of the applicant's propensity to deception and dishonesty

The intentional submission of false statements and/or other evidence, including false or forged documents, in support of an application for international protection may influence the credibility assessment. The assumption that underlies this indicator is that ordinarily an applicant with a legitimate claim should not find it necessary to present false statements and/or documentary evidence, or conceal relevant facts or documents. Therefore, if there are strong reasons to believe that the applicant has provided false information

or other evidence that is false, this may be considered to undermine the credibility of the asserted fact, and it may be taken into consideration in determining whether to afford the benefit of the doubt.

However, UNHCR noted that in the Member States surveyed, a distinction is not necessarily drawn between the presentation of false information and/or other evidence for the purpose of supporting the reasons for the application on the one hand and the presentation of false information and/or other evidence to facilitate the journey and entry to the Member State on the other. In some states' practice, credibility may be seen as weakened by the submission of false documentation as if valid upon arrival in the Member State; the destruction or disposal of travel documents *en route* or upon arrival; and the provision of false information regarding the travel route.

The use of false documents and unlawful entry, which some Member States consider potentially to undermine credibility, are precisely the actions to which persons in need of international protection often have to resort. There are many valid reasons, unrelated to the reasons for the application, why an applicant may not cooperate in the provision of information regarding the travel route and the documentation used; may assert the validity of false documents; and/or may destroy or dispose of travel documents. An applicant may truthfully relate the core reasons for the application for international protection, after having provided false information about the journey to the Member State or false travel documents. Such behaviour should not automatically be used as grounds for imposing a higher credibility threshold or denying the applicant the benefit of the doubt. Where the provision of false information and/or documentation relates to a material fact, such as identity, the determining authority must determine whether the applicant can provide a satisfactory explanation for his or her behaviour.

It should be borne in mind that the submission of false documentation to support a statement does not necessarily mean that the statement is not credible. Moreover, UNHCR recalls that untrue statements alone are not a reason for refusal of refugee status and/or subsidiary protection status.

UNHCR's research has highlighted that states consider an extremely wide range of applicant behaviours in assessing the credibility of applications for international protection. Moreover, certain behaviour may be considered indicative of non-credibility in one Member State, but not in another.

UNHCR hopes that this report will provide the grounds for more evidence-based discussions at the level of the European Union and within Member States to achieve more coherence in this area. Additional research is necessary on the assumptions that underpin these factors and others, and the legal framework and the jurisprudence that support the use of such factors. Likewise, further guidance is also necessary on the interpretation of the 'general credibility of the applicant' to enhance the harmonization of the assessment of credibility in the asylum systems of the EU.

# 7 Approaches taken to the credibility assessment

There are different approaches, steps, and sequences that can be adopted to assess credibility. The approaches taken to the assessment of credibility by the determining authorities in the EU have been informed by national legal traditions and practices in the assessment of evidence, as well as the principles and standards of international law. National legal traditions and practices vary across EU Member States, with some jurisdictions applying the principle of the free evaluation of all evidence. However, an approach based on the free evaluation of evidence does not preclude a structured approach to the assessment of credibility.

The absence of a structured or systematic approach to the assessment of credibility could lead to the relevant principles and standards not being appropriately applied. Moreover, variances in outcomes may occur across and within national jurisdictions where determining authorities and individual decision-makers employ significantly different approaches to the credibility assessment. Therefore, the EAC module on Evidence Assessment encourages national asylum officials to adopt a structured approach to credibility.

UNHCR's research sought to provide a broad overview of the structured approaches taken by the Member States surveyed for this research and promoted by the EAC, as well as highlighting common features and differences in these approaches. UNHCR found that while the approaches stipulated in guidance in the Netherlands and the UK share common features with each other and the EAC, there are some notable differences relating to:

- 1 the starting point for the credibility assessment;
- 2 whether and when the decision-maker is required to assess the credibility of all asserted material facts;
- 3 the application of the principle of the benefit of the doubt;
- 4 the threshold for establishing credibility and accepting a material fact.

## The starting point

Both UNHCR and the EAC suggest that the most appropriate starting point for the credibility assessment is the determination of the material facts. UNHCR observed that in most of the cases reviewed in the three Member States surveyed, the material facts appeared to have been determined, and this constituted the starting point for the credibility assessment in Belgium and the UK. However, in the Netherlands, before determining the material facts and assessing the credibility of the applicant's statements, the decision-maker must first determine which of two thresholds of credibility (or standard of proof) will be applicable. This, in effect, constitutes the starting point of the credibility assessment. A determination that any of the circumstances listed in Article 31 (2) (a) to (f) Aliens Act - relating to the behaviours discussed in Chapter 6 - may mean that the credibility of the applicant's statements are considered undermined in advance of the determination of the material facts and the credibility assessment and a higher credibility threshold applies requiring the applicant to be 'positively persuasive'. Of note in this context is the ruling of the Dutch Council of State, which widened the scope of application of the 'positively persuasive' test beyond the circumstances set out in Article 31 (2) (a) to (f) Aliens Act 2000. Otherwise, the standard threshold of credibility applies and the applicant is required to make plausible the facts and circumstances underlying his or her application.

As such, in the Netherlands, before the material facts of an application have even been identified and assessed, the credibility of those facts can be considered undermined in advance - on grounds not directly related to the reasons presented by the applicant for the application.

## Assessing the credibility of each material fact

Both the UK approach and EAC require the decision-maker to assess the credibility of each determined material fact. Each presented material fact should be assessed in the light of all the relevant evidence obtained pertaining to that fact and through the lens of the applicable credibility indicators, taking into account the applicant's individual and contextual circumstances, and the reasonableness of any explanations provided by the applicant concerning potentially adverse credibility findings. In Belgium and the Netherlands, however, exceptions apply to this approach. For example, if an essential material fact, such as the applicant's asserted origin, is considered not credible then the decision-maker may decide not to assess the credibility of other material facts that derive from this essential material fact. The research therefore indicated that there may be differences in state practice regarding whether the credibility of each material fact is assessed.

## Application of the principle of the benefit of the doubt

The principle of the benefit of the doubt reflects the recognition of the considerable difficulties that applicants face in obtaining and providing evidence to support their claim. The principle recognizes that, notwithstanding the efforts of an applicant, and indeed the determining authority, to gather additional evidence pertaining to the material facts presented by the applicant, there may still be some doubt surrounding (some of) the applicant's statements. Moreover, the need for the principle is reinforced by recognition of the fact that an applicant's life and/or integrity may be put at grave risk if international protection is wrongfully declined. Application of the principle of the benefit of the doubt allows the decision-maker to reach a clear conclusion to accept an asserted material fact as credible where an element of doubt remains.

The need for, and relevance of, the principle of the benefit of the doubt for the credibility assessment has been widely acknowledged in national legislation and by courts. This includes the ECtHR which has held that it is frequently necessary to give applicants the benefit of the doubt when it comes to assessing the credibility of their statements. Nevertheless, UNHCR's review of case files suggested that the principle is rarely referred to in explicit terms by decision-makers in their internal written evaluations or written decisions. This may be due, in part, to the fact that Article 4 (5) QD, as the principle of the benefit of the doubt is not explicitly mentioned in the Qualification Directive.

UNHCR's research findings, based on review of case files, interviews with stakeholders and observation of training sessions on the credibility assessment, indicated that some decision-makers may lack a clear understanding of the purpose and relevance of the principle of the benefit of the doubt. This includes in particular:

- 1 The asserted facts in relation to which the principle of the benefit of the doubt is considered;
- 2 The point at which a consideration of the principle of the benefit of the doubt is undertaken;
- 3 The criteria and considerations taken into account in determining whether to grant the benefit of the doubt.

The paragraphs below summarize these specific observations.

## The asserted facts in relation to which the principle of the benefit of the doubt is considered?

According to the EAC, the principle should be considered in relation to those asserted material facts that are not corroborated by documentary or other evidence, but are ‘internally credible’ (reasonably detailed, consistent and plausible).

In the Netherlands, the principle of the benefit of the doubt is explicitly referred to in the provisions of national legislation transposing Article 4 (5) QD. Guidance in the Netherlands states that where elements of the applicant’s statements are not considered credible, the applicant’s statements may still be considered credible and the benefit of the doubt given where, for example, the inconsistencies, vague or unsubstantiated statements do not relate to the core of the account but to peripheral issues. From UNHCR’s review of case files, because no explicit reference was made to the principle of the benefit of the doubt, it was not possible to confirm the circumstances in which the principle is considered in practice. Decision-makers informed UNHCR that because the principle is woven into legislation and policy guidance notes that consideration of the principle is ‘blended’ into the credibility assessment, explicit reference to the principle is not made in jurisprudence and is therefore not explicit in written decisions either.

According to UK policy guidance, the principle should be considered with regard to those material facts that are ‘internally credible’ but lack ‘external evidence’ (i.e. country of origin information) to confirm them. Where there is country information to support an applicant’s account of a past or present fact, and the applicant’s account is ‘internally credible’, the decision-maker may accept the material fact without reference to the concept of the benefit of the doubt. From the review of case files in the UK, it was not always apparent whether the decision-maker had understood which asserted facts, according to national guidance, were appropriate in relation to consideration of the principle of the benefit of the doubt: some written decisions did not explicitly state the credibility finding with regard to each material fact, and did not explicitly determine which facts were considered doubtful following that assessment; and there were some cases when a material fact was explicitly determined to be uncertain but there was no reference to the application of the principle of the benefit of the doubt, or any explicit conclusion about whether the fact had been accepted or rejected.

In Belgium, the principle of the benefit of the doubt is understood to be subsumed within the provisions of Article 57/7ter Aliens Act, which transposes Article 4 (5) QD. However, UNHCR was informed by the determining authority that the principle of the benefit of the doubt is applied, and therefore it is considered, with regard to all asserted material facts regardless of whether there is documentary or other evidence to confirm or support a material fact. Of the decisions reviewed in Belgium that granted refugee status, information in a few of the case files revealed that material facts that were detailed, consistent, and plausible, although not confirmed by documentary evidence, were accepted, which would indicate that, in practice, the concept may be applied in accordance with the expression’s everyday meaning and usage, i.e. in case of any doubt, when you are not sure what to do, give the applicant the benefit of the doubt.

Based on UNHCR’s research, it was difficult to confirm the circumstances in which the principle is considered in practice. Written decisions and internal notes often did not specify whether the principle of the benefit of the doubt or legislation transposing Article 4 (5) QD had been considered or applied in relation to an asserted material fact.

## The point at which a consideration of the principle of the benefit of the doubt is undertaken

The EAC suggests that consideration of whether the benefit of the doubt may be applicable follows the assessment of the applicant's statements based on their internal and external credibility as well as plausibility. This approach is also reflected in jurisprudence in Belgium and policy guidance in the UK.

However, UNHCR's review of case files in the UK indicated that this guidance may not always be applied in practice and that some decision-makers may apply the principle of the benefit of the doubt midway through the credibility assessment and before considering all the evidence in the round.

As discussed, this step is not distinguished in policy guidance and practice in the Netherlands and Belgium. Based on UNHCR's review of case files in Belgium and the Netherlands, it was not possible to discern whether this specific step is taken at the end of the credibility assessment in practice.

## The criteria and considerations taken into account in determining whether to grant the benefit of the doubt

Legislation, case law, policy guidance and/or training in the three Member States of focus provide that the five conditions set out in Article 4 (5) (a) to (e) QD should be taken into account in considering whether to grant the benefit of the doubt. The five conditions for waiving the need for documentary or other evidence confirming the applicant's statements are expressed cumulatively in Article 4 (5) QD.

The EAC, on the other hand, encourages decision-makers to 'balance' the conditions set out in Article 4 (5) QD. The UK policy guidance *explains* that if an applicant meets all five provisions, a decision-maker should give the benefit of the doubt. However, if an applicant fails to meet one or more of the criteria, this in itself does not permit a decision-maker to disregard all unsubstantiated areas of an applicant's claim because an unsubstantiated statement can be credible if it is generally internally consistent, compatible with known facts and plausible.

The appeal authority in Belgium has held that the benefit of the doubt may be granted when all the conditions of Article 57/7ter Aliens Act, which transposes Article 4 (5) QD, have been satisfied. However, given that Article 4 (5) has been transposed into a non-mandatory, a material fact may be considered not to be credible even though the five criteria are fulfilled. However, the determining authority informed UNHCR that in practice decision-makers do not mechanically require satisfaction of all five conditions with regard to each material fact. Indeed, UNHCR noted that in some cases reviewed that granted refugee status, the applicant's statements were accepted as credible on the basis of their detail, internal and external consistency, and plausibility, without explicit reference to the other conditions set out in Article 57/7ter Aliens Act, although the statements were not supported by documentary or other evidence.

Similarly, in the Netherlands, the Council of State considers the conditions as cumulative. Dutch policy guidance implies that the benefit of the doubt may be withheld if one of the six circumstances stipulated in Article 31 (2) (a) to (f) Aliens Act applies. This means that where an applicant entered the Netherlands, for example, without the required entry documents and failed to report immediately to the competent authorities; or produced a false or forged travel document, identity card or other papers and, despite being questioned about this, deliberately asserted that they were genuine; or deliberately produced a travel document, identity card or other papers that did not relate to him or her in support of the application; or is considered accountable for an inability to produce a travel document, identity card or other papers considered necessary for the assessment of the application, the benefit of the doubt may not be given. In

the overwhelming majority of cases reviewed by UNHCR, one of the above-mentioned circumstances was considered to apply.

Policy guidance in the UK emphasizes that when decision-makers are considering giving an applicant the benefit of the doubt *much* may depend on the general credibility of the applicant's account. Of note here is the focus on the general credibility of the applicant's account, not the general credibility of the applicant *per se*. The findings of UNHCR's review of case files indicated that decision-makers may tend to place significant reliance on Article 4 (5) (e) QD to withhold the application of the benefit of the doubt. In a number of cases viewed by UNHCR, in which the benefit of doubt principle was considered, the applicant's general credibility under Article 4 (5) (e) was singled out without mention of any of the other conditions and this provision was regularly referred to as being unfulfilled by applicants.

## The threshold for establishing credibility

The credibility assessment is predicated upon the fact that there is no requirement that relevant facts asserted by the applicant are affirmatively 'proven'. The decision-maker does not need to be certain or fully convinced of the veracity of a relevant fact in order to find it credible and accept it for the purpose of status determination. In other words, the credibility assessment purposefully and positively allows for doubt and uncertainty.

UNHCR's research revealed that Member States have taken different approaches to the need to articulate the level of conviction that the applicant's statements, and any other evidence, must induce in the mind of the decision-maker in order to accept a relevant asserted fact as credible, and, where articulated, the expression of that conviction.

In Belgium, a level of conviction has not been articulated and decision-makers are not provided with any additional marker other than the provisions of Article 4 (5) QD as transposed in national legislation. Case law simply states in broad terms that the benefit of the doubt should be given when one is convinced of the credibility of the statements.

In the Netherlands, legislation and jurisprudence stipulate that two thresholds of credibility may apply depending on the circumstances pertaining to the application. The general rule is that the applicant's statements are considered to be credible when they are consistent in outline and fit with what is known from other sources about the situation in the country of origin. However, if one (or more) of the circumstances mentioned in Article 31 (2) (a) to (f) Aliens Act 2000 applies or another circumstance stipulated by the Council of State, the applicant has to be more convincing in his or her statements i.e. his or her statements must be 'positively persuasive'. This means that the statements need to be plausible, consistent, coherent and detailed, and need to be credible on the level of the relevant specificities. If there are any inconsistencies, ambiguities, incoherent twists or gaps in the applicant's account, then the standard of 'positive persuasiveness' is not satisfied. In this regard, the determining authority is not required to distinguish between core and peripheral facts. Of UNHCR's sample of cases in the Netherlands, in the overwhelming majority the applicant was required to meet the higher threshold of 'positive persuasiveness'. In nearly all these cases, this threshold was applied because the applicant was considered by the determining authority to be accountable for an inability to produce a travel document, identity card or other papers considered necessary for the assessment of the application.

UNHCR recalls that the fact that refugees are often forced to flee without documentation was intensively discussed during the drafting process of the 1951 Convention and is recognized by Article 31 (1) of the 1951 Convention, which exempts refugees under certain conditions from punishment for illegal entry. The UNHCR Executive Committee reaffirmed in 1981 that asylum-seekers should not be exposed to any unfavourable treatment solely on the grounds that their presence in the country is considered unlawful. Many applicants have valid reasons for the absence of or reliance on fraudulent documents, for example,

because they were forced to leave their countries without documents or they have been compelled to protect the identity of the individuals who assisted them in reaching the asylum country. There is, therefore, no justification for imposing a higher threshold of credibility in such cases. Failure to produce documentary evidence should not prevent the claim from being accepted if the statements of the applicant are, overall, coherent and plausible and do not run counter to generally known facts. The application of such a high threshold of credibility may result in the risk that it cannot be met even though the applicant's account has been truthfully given and increases the risk of *refoulement* contrary to Article 33 of the 1951 Convention.

Contrary to the dual approach taken in the Netherlands, jurisprudence and policy guidance in the UK confirm that one approach should be taken by decision-makers with regard to all applications. Decision-makers should accept all those material facts that are certainly, as well as possibly true, even if not probably true. The national courts have also referred to this approach as the standard of '*reasonable likelihood*' of the truth of past facts and the '*real possibility*' test. Whether the threshold of credibility is defined as an 'approach' or standard of proof, UNHCR's review of decisions in the UK suggested that a more stringent approach is often taken in practice.

This research did not seek to examine whether implementation of Article 4 (5) QD within the conceptual framework of a standard of proof or defined approach makes a notable difference compared with implementation without such a marker, as is the case in Belgium. It is, therefore, not clear what influence, if any, a standard of proof or defined approach has on the interpretation of the provisions of Article 4 (5) QD. The question of how these varying approaches to the threshold of credibility actually impact on the credibility assessment in practice would require further research.

State practice in the three Member States under survey shows that the issue of the threshold for establishing credibility is not only an extremely complex topic, but that its practice is also widely divergent. The study highlights the need for further research in this area of the credibility assessment, discussions among experts, and exchanges of views with judges, in order to achieve clearer understanding of, and common standards and approaches for, this key concept of the credibility assessment in the asylum procedure.

## Clear statement of which facts are accepted as credible and which facts are rejected

The credibility assessment requires the decision-maker to reach a clear and unambiguous finding on the credibility of each of the determined material facts and explicitly state whether each asserted material fact is accepted as credible or not.

UNHCR's research revealed a contrast in practice in this regard. In one Member State, the overwhelming majority of the decisions reviewed made clear findings on whether a material fact was 'accepted' or 'rejected' and stated reasons for each finding. However, in two Member States, UNHCR noted that with regards to decisions not to grant international protection, it was not always clear from the written decision which asserted facts, if any, had been accepted.

Guidance in the Netherlands specifies that when a fact is considered credible as a whole, the written (intended) decision does not have to refer to this finding, and an absence of written reference should be assumed to indicate that the relevant fact is considered credible. In general terms, UNHCR's research revealed that generally findings of non-credibility were stated in unambiguous terms and reasons were provided.

UNHCR reiterates that the decision-maker should reach a clear and unambiguous finding on the credibility of each of the facts determined to be material and explicitly state whether and why each asserted material fact is rejected as not being credible. In cases where an element of doubt remains in relation to an asserted

material fact, the application of the benefit of doubt allows the decision-maker to reach a clear and unambiguous conclusion regarding the credibility of such a fact even in the absence of supporting evidence. Decisions should state the reasons underpinning the findings of facts.

## A structured approach to the credibility assessment

UNHCR's observation of state practice suggests the need for a structured approach to ensure that the credibility assessment adheres to relevant principles and standards. UNHCR favours a structured approach underpinned by a focus on the material facts presented by the applicant, taking into account his or her individual and contextual circumstances as informed by evidence from the relevant span of disciplinary fields. UNHCR has identified the following key steps in the credibility assessment:

- 1 In cooperation with the applicant, gather the information to substantiate the application.
- 2 Determine the material facts of the application taking into account the applicant's past and present experiences or fear of ill-treatment, torture, persecution, harm, or other serious human rights violations, as well as the wider legal, institutional, political, social, religious, cultural context of his or her country of origin, or place of habitual residence, the human rights situation, the level of violence, and available state protection.
- 3 Assess the credibility of each material fact. Each material fact should be assessed, taking into account the applicant's statements and all other evidence that bears on the fact, through the lens of the five credibility indicators noted below, taking into account the applicant's individual and contextual circumstances and the reasonableness of his or her explanations:
  - (a) Sufficiency of detail and specificity;
  - (b) Internal consistency;
  - (c) Consistency with information provided by any family members and/or other witnesses;
  - (d) Consistency with available specific and general information, including country of origin information (COI); and
  - (e) Plausibility.
- 4 Determine which material facts can be:
  - (a) accepted as credible;
  - (b) rejected as not credible; and
  - (c) those material facts for which an element of doubt remains.

An asserted fact may be accepted because it is sufficiently detailed, internally consistent and consistent with information provided by family members and witnesses, consistent with available specific and general objective information, and plausible when considered in light of the applicant's individual and contextual circumstances. Such facts may be accepted without reference to the principle of the benefit of the doubt.

An asserted fact may be rejected because, when taking into account the reasonableness of the explanations provided by the applicant with regard to the potentially adverse credibility findings and the applicant's individual and contextual circumstances, the applicant's statements about that fact are not sufficiently

detailed, consistent, and plausible and/or are contradicted by other reliable objective evidence. Again, such facts may be rejected without reference to the principle of the doubt because the principle cannot be applied to remedy what is clearly not credible based on all the available evidence.

5 Consider the application of the principle of the benefit of the doubt for those material facts for which an element of doubt remains, taking into account the applicant's individual and contextual circumstances. Determine on the basis of all the information at hand, and the applicant's effort to substantiate the application, as well as his or her explanations for any apparent lack of credibility, whether the applicant's statements are on the whole coherent and plausible, and do not run counter to generally known facts. Decide:

(a) to accept the remaining facts as credible; or

(b) to reject the remaining facts as not credible.

State in the written decision all the material facts that have been accepted as credible and will inform the assessment of risk in stage two of the examination, and all the material facts that have been rejected as not credible, as well as the reasons underpinning these findings of facts.

# 8. Conclusion

UNHCR has aimed through this project to identify key concepts and insights into specific aspects of practice in relation to credibility assessment in European Union asylum procedures. Given the complexity of the subject, and limited time and resources, it has not sought to provide a comprehensive overview or comparative analysis of evidentiary rules and practices in the EU. UNHCR hopes nevertheless to have clarified and highlighted some important issues that warrant further research, analysis, dialogue, and consideration, including for asylum practitioners, decision-makers at first and later instances, judges, EU institutions, EASO, policy-makers and legislative bodies at European and national level, as well as academia and civil society.

The results of this work have also been made possible due to the financial support of the European Commission through the European Refugee Fund, the contributions of UNHCR's other CREDO project partners, Hungarian Helsinki Committee, the International Association of Refugee Law Judges (IARLJ), Asylum Aid, and the engagement of all other institutions and parties concerned. UNHCR also welcomes their collective engagement in further discussions on this subject in order to take the thinking forward on credibility assessment in a constructive, principled and practical way, in line with international and European law.

Among UNHCR's observations from this research, variations in the three Member States under review were apparent in practically all aspects of the credibility assessment. These discrepancies could be indicative of wider variations and challenging issues across the EU Member States.

In some Member States, there may be a disparity between policy and practice in the credibility assessment. The research suggests that some decision-makers are unaware of the content of guidance, or that their content is unclear or misunderstood. This calls, in addition to further research, discussion and scrutiny of the issue (including by courts), for enhanced training on credibility assessment for decision-makers across the EU.

Further reflection and discussion in the area of credibility assessment will be of value to all stakeholders involved in asylum systems in the EU. It would benefit UNHCR as it works to develop revised guidance on credibility assessment in asylum procedures. It would also assist states and other concerned bodies for whom credibility assessment continues to represent a major challenge to be met in seeking to establish and reinforce quality and consistency in asylum decision-making in the EU. UNHCR stands ready to continue to contribute further to this discussion and evolving thinking in future.



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# Guide to Credibility Assessment – An Overview

## STEPS IN THE ANALYSIS



## EXPLANATION

### Preparation for the Personal Interview

1	<b>AUTHORITY'S DUTY TO PROVIDE INFORMATION &amp; GUIDANCE</b>	<input type="checkbox"/>	Before the personal interview the Authority provides information to the Applicant about his or her duty to substantiate the application and guidance on how to do so. This obligation continues throughout the process.
2	<b>AUTHORITY'S DUTY TO GATHER BASIC INFORMATION ABOUT THE APPLICANT</b>	<input type="checkbox"/>	The basic bio data (age, gender, nationality, ethnic origin, physical/mental health, education, social status, religion, urban or rural background, relatives etc.) information may be gathered orally or in a form with assistance from an interpreter where required. It includes the question: "Why are you seeking asylum?" but does not delve into the details of the claim.
3	<b>DM'S DUTY TO PREPARE FOR THE PERSONAL INTERVIEW</b>	<input type="checkbox"/>	The DM familiarizes him/herself with the facts of the application, researches general and specific COI, gathers information on specific aspects of the claim, considers the individual and contextual circumstances of the Applicant, considers any claims made by family members and prepares interview questions.

### During the Personal Interview

4	<b>DM'S DUTY TO PROVIDE INFORMATION AND GUIDANCE</b>	<input type="checkbox"/>	At the outset of the personal interview the DM provides information to the Applicant about his or her duty to substantiate the application and guidance on how to do so.
5	<b>DM'S DUTY TO GUIDE THE APPLICANT THROUGH APPROPRIATE QUESTIONING</b>	<input type="checkbox"/>	The DM uses appropriate questions, remains impartial and objective during the interview both in his or her verbal and non-verbal communication.
6	<b>DM'S DUTY TO TAKE INTO ACCOUNT INDIVIDUAL &amp; CONTEXTUAL CIRCUMSTANCES</b>	<input type="checkbox"/>	The DM takes age, gender, cultural and ethnic background, education, social status, sexual orientation and/or gender identity into account in the way questions are put to the Applicant, responses analysed, assessed and interpreted, and follow-up questions phrased.
7	<b>DM'S DUTY TO GATHER EVIDENCE BEARING UPON THE CLAIM</b>	<input type="checkbox"/>	As necessary, the DM uses all means at his or her disposal to gather all relevant evidence bearing on the application, including any supporting evidence.
8	<b>DM'S DUTY TO GIVE THE APPLICANT AN OPPORTUNITY TO COMMENT ON AND EXPLAIN POTENTIAL ADVERSE CREDIBILITY FINDINGS</b>	<input type="checkbox"/>	The DM provides the Applicant with an opportunity to clarify any apparent lack of details, omissions, inconsistencies, and implausibilities. The opportunity to comment on potential adverse credibility findings is maintained throughout the procedure until a decision is made. The DM provides the Applicant with a reasonable opportunity and appropriate time-frame to discharge his or her duty to substantiate the application.

### After the Personal Interview: Assessing the Applicant's Statements and Other Evidence

9	ASSESS THE CREDIBILITY OF EACH MATERIAL FACT	<input type="checkbox"/>	In assessing the credibility of each material fact the DM gives due consideration to the credibility indicators in light of the individual and contextual circumstances of the Applicant and the factors affecting the DM's interpretation of the information.
10	DETERMINE WHICH MATERIAL FACTS TO ACCEPT	<input type="checkbox"/>	The Applicant may submit further evidence for consideration by the DM until a decision is made or agree with the DM in relation to forthcoming evidence to allow it to be included in the decision. The DM must consider which material facts to accept, which to reject, and those where an element of doubt remains.
11	CONSIDER WHETHER TO APPLY THE BENEFIT OF THE DOUBT TO EACH REMAINING FACT	<input type="checkbox"/>	When the statements are on the whole coherent, plausible and consistent with COI, grant the benefit of the doubt to those facts for which there is no supporting documentary or other evidence, including COI, or an element of doubt remains.
12	LIST ALL MATERIAL FACTS THAT HAVE BEEN ACCEPTED AND THOSE THAT HAVE BEEN REJECTED	<input type="checkbox"/>	The accepted material facts provide the basis for the analysis that will be made in Stage II when determining whether the Applicant has a well-founded fear or risks serious harm.

# The Credibility Assessment – Purpose & Principles

DMs do not have unlimited discretion in the assessment of credibility: they must respect EU fundamental rights and principles, and EU administrative law principles. DMs must work in cooperation with the Applicant [Art.4(1) QD], assess the application on an individual basis taking into account some specific factors [Art.4(3)QD], and accept unsupported facts under certain conditions [Art.4(5)QD]. Applications must be examined and decisions taken individually, objectively and impartially [Art.8(2)APD] with the knowledge of relevant asylum and refugee law standards [Art.8(2)(c)APD] including CJEU, ECtHR and CAT standards, and UNHCR guidance.

PRINCIPLES & STANDARDS	COMMENTARY	<input checked="" type="checkbox"/>
<b>SHARED DUTY</b>	The duty to provide statements and submit documentary or other evidence in support of an application lies in principle with the Applicant. But it is also the DM's duty to cooperate actively with him/her to gather all the information needed. The duty to substantiate the application is shared.	<input type="checkbox"/>
<b>INDIVIDUAL ASSESSMENT</b>	Credibility assessment must be conducted on an individual basis taking into account the individual and contextual circumstances of the Applicant.	<input type="checkbox"/>
<b>OBJECTIVE &amp; IMPARTIAL ASSESSMENT</b>	The determination of international protection is not an adversarial process. The credibility assessment must be carried out objectively and impartially. The DM should be aware that his or her own values, prejudices and views, emotional and physical state can all affect the objectivity of his or her assessment and should strive to minimize them.	<input type="checkbox"/>
<b>EVIDENCE-BASED ASSESSMENT</b>	Whether the DM is accepting or rejecting a fact, his or her must be able to base that decision on evidence. Adverse credibility findings should not be based on unfounded assumptions, subjective speculation, conjecture, stereotyping, intuition, or gut feelings.	<input type="checkbox"/>
<b>FOCUS ON MATERIAL FACTS</b>	Material facts go to the heart of a claim. Peripheral ones do not. Credibility assessment should focus on material facts that are most significant in the determination of the claim. Adverse credibility findings must be substantial in nature and not relate only to minor matters.	<input type="checkbox"/>
<b>OPPORTUNITY TO COMMENT ON ADVERSE FINDINGS</b>	Every Applicant has the right to be heard [Art.41 EU Charter]. This includes the right to provide an explanation for or comment on a fact where the DM may have credibility doubts. The DM should give the Applicant a reasonable opportunity to address any issues that may result in adverse credibility findings.	<input type="checkbox"/>
<b>ASSESSMENT BASED ON ENTIRE EVIDENCE</b>	Credibility assessment must be based on <b>all</b> available relevant Information provided by the Applicant and gathered by the DM, including additional explanations for apparent inconsistencies, omissions, vagueness or implausibilities provided by the Applicant. The DM should not reach conclusions on the credibility of each material fact in isolation.	<input type="checkbox"/>
<b>CLOSE &amp; RIGOROUS SCRUTINY</b>	Because decisions can involve matters of life and death, each case deserves a close and rigorous review of all the information at hand. The Applicant should be able to present his or her case fully; all the evidence provided must be considered; decisions should be based on all the information available; the DM must dispel any doubts.	<input type="checkbox"/>
<b>BENEFIT OF THE DOUBT</b>	Because decisions can involve matters of life and death, and because, despite the best efforts of the Applicant and the DM to gather evidence in support of the material facts, there may still be a measure of doubt on some facts, consideration of the principle of the benefit of the doubt is often needed.	<input type="checkbox"/>
<b>CLEAR FINDINGS &amp; STRUCTURED APPROACH</b>	Credibility assessment determines which facts can be accepted and then will be considered in the well-founded fear of persecution/real risk of serious harm analysis. The principle of the benefit of the doubt allows the DM to arrive at a clear conclusion on whether to accept or reject material facts about which a measure of doubt remains. A structured approach ensures the appropriate application of the relevant standards.	<input type="checkbox"/>

# Gathering the Facts: The Applicant’s Duty to Substantiate the Application

Art.4(1) QD states: “Member States **may** consider it the duty of the applicant to submit **as soon as possible** all the elements needed to substantiate the application for international protection.”

Art.4(2)QD lists the relevant **elements** needed for the substantiation of the application, which are the “**Applicant’s statements and all documentation at the Applicant’s disposal.**”

Art.4(5)(a) requires that the Applicant make a **genuine effort** to substantiate the application.

Art.4(5)(b) requires that “**a satisfactory explanation regarding any lack of other relevant elements has been given.**”

## THE APPLICANT’S DUTY ‘IN PRINCIPLE’ TO SUBSTANTIATE THE APPLICATION

DUTY	<input checked="" type="checkbox"/>	EXPLANATION	THE ELEMENTS	<input checked="" type="checkbox"/>
1. MAKE A GENUINE EFFORT	<input type="checkbox"/>	Evidence may be oral or documentary. It includes the statements of the Applicant and oral evidence provided by experts, family members and other witnesses. Evidence may be documentary, incl. written, graphic, digital, visual materials, COI, exhibits (physical objects, bodily scarring) and audio/visual recordings. Evidence includes anything that asserts, confirms, supports, or bears on the relevant facts at issue.	Age	<input type="checkbox"/>
↓			Gender	<input type="checkbox"/>
2. PROVIDE THE STATEMENTS AND ALL DOCUMENTATION AT THE APPLICANT’S DISPOSAL	<input type="checkbox"/>	The Applicant’s duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every relevant fact presented. The Applicant’s statements constitute evidence and are capable by themselves of substantiating the application. Some asserted facts are not susceptible to supporting documentary or other evidence.	Identity, nationality(ies), ethnic origin	<input type="checkbox"/>
↓			Country or origin or place of habitual residence	<input type="checkbox"/>
3. SUBSTANTIATE THE APPLICATION AS SOON AS POSSIBLE	<input type="checkbox"/>	The DM should not have onerous expectations regarding what documentary or other evidence the Applicant should possess and/or be reasonably able to obtain. The assessment of the ‘genuine effort’ should take into account the individual and contextual circumstances of the Applicant, including the means at his or her disposal to obtain documentary or other evidence.	Family members	<input type="checkbox"/>
↓			Education	<input type="checkbox"/>
4. PROVIDE A SATISFACTORY EXPLANATION REGARDING ANY LACK OF OTHER RELEVANT ELEMENTS	<input type="checkbox"/>	The Applicant may be requested, or wish to provide, additional relevant statements or other evidence after the assessment of the evidence begins. The interpretation of ‘as soon as possible’ needs to be informed by an understanding of the individual and contextual circumstances that may inhibit disclosure of information and affect the possibility to obtain supporting documentary and other evidence. This includes taking into account the circumstances in the country of origin.	Social status	<input type="checkbox"/>
			Rural/urban background	<input type="checkbox"/>
			Religion	<input type="checkbox"/>
			Documentation	<input type="checkbox"/>
			Physical/mental health	<input type="checkbox"/>
			Previous asylum applications	<input type="checkbox"/>
			Reasons for applying for international protection	<input type="checkbox"/>

# Gathering the Facts: The Decision-Maker's Duty to Cooperate

Article 4 (1) of the EU Qualification Directive states: “In **cooperation** with the Applicant, it is the **duty** of the Member State to assess the relevant elements of the application.”

The Court of Justice of the European Union (CJEU) has explained that although “it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.”

## THE DECISION-MAKER'S DUTY TO COOPERATE

DUTY	EXPLANATION
<p>1. DM'S PROVISION OF INFORMATION AND GUIDANCE TO THE APPLICANT</p> <p style="text-align: center;">↓</p>	<p><input checked="" type="checkbox"/> The Applicant cannot be expected to know that his or her has a duty to substantiate the application, how to discharge this duty, and what facts and type of documentary or other evidence may be relevant. The DM informs the Applicant in a language and manner his or her can understand of what is required to substantiate the application. The DM invites the Applicant to submit evidence that can reasonably be obtained to support the material facts, and informs him/her of the time-frame and the means at an Applicant's disposal in order to submit all the elements required. This information must be given in time for Applicants to comply with these obligations.</p>
<p>2. DM'S PROVISION OF GUIDANCE THROUGH THE USE OF APPROPRIATE QUESTIONING DURING THE INTERVIEW</p> <p style="text-align: center;">↓</p>	<p><input type="checkbox"/> The DM guides the Applicant to gather all the relevant information relating to the material facts of the application. The DM uses open, probing and closed questioning in combination to allow the Applicant to substantiate his or her claim. The interviewer is impartial and objective throughout the interview both in verbal and non-verbal communication. Questioning should be sensitive to the individual and contextual circumstances of the Applicant. Respect for the standards of the credibility assessment and the human dignity of the Applicant should be a guiding principle at all times.</p>
<p>3. DM'S PROVISION OF AN OPPORTUNITY FOR THE APPLICANT TO EXPLAIN POTENTIAL ADVERSE CREDIBILITY FINDINGS</p> <p style="text-align: center;">↓</p>	<p><input type="checkbox"/> The Applicant should be afforded an opportunity to address potentially adverse findings up until the decision is made. The DM identifies any apparent inconsistencies, contradictions, discrepancies, omissions, and implausibilities at the interview and puts them all to the Applicant. It may require the DM to offer a further interview or other means for the Applicant to provide an explanation. Where explanations are offered, these need to be considered before a final decision is taken on the application.</p>
<p>4. DM'S GATHERING OF EVIDENCE BEARING ON THE APPLICATION BY HIS OR HER OWN MEANS</p>	<p><input type="checkbox"/> Because of the inherent difficulties faced by Applicants to provide documentary and other evidence in support of their statements, the DM gathers evidence and other specific information bearing on the Applicant's asserted material facts by his or her own means, including where necessary, any evidence that supports these facts.</p>
<p>4.1 COUNTRY OF ORIGIN INFORMATION (COI) &amp; OTHER EVIDENCE</p>	<p><input type="checkbox"/> The DM obtains, by his or her own means, general and specific COI &amp; other evidence, COI should be relevant, accurate, objective, impartial, reliable, and time-appropriate. The DM evaluates the Applicant's statements and other evidence in the light of what is generally known about the situation in the country of origin, or place of habitual residence, as well as any specific evidence available to the case. The DM adheres to the principle of objectivity and impartiality, which may require gathering evidence that confirms or supports, and not just refutes, the asserted facts.</p>
<p>4.2 PRINCIPLE OF RIGOROUS SCRUTINY</p>	<p><input type="checkbox"/> The DM assesses <b>all</b> the material gathered in substantiation of the application, taking into account the individual and contextual circumstances of the Applicant. The DM also considers material obtained by his or her own means. It is the DM's duty to dispel any doubts about this information.</p>

# The Credibility Assessment

## – Factors to Take Into Account

### FACTORS AFFECTING THE APPLICANT

Credibility assessment must adhere to certain legal principles and standards. It must be conducted fully taking into account the individual and contextual circumstances of the Applicant. These include his or her personal background (age, nationality, ethnic origin, gender, sexual orientation and/or gender identity, education, social status, religion, cultural and rural/urban background, and state of mental and physical health); his or her past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations; as well as the legal, institutional, political, social, religious, cultural context of his or her country of origin, or place of habitual residence, the human rights situation, the level of violence, and availability of state protection. The DM should cross geographical, cultural, socio-economic, gender, educational and religious barriers, and take account of different individual experiences.

THE LIMITS & VARIATIONS OF HUMAN MEMORY	EXPLANATION
RECONSTRUCTION	The DM should be aware of the wide-ranging variability in people's ability to record, retain, and retrieve memories. Visual, verbal and auditory information is not recorded as an accurate copy of experiences, but is reconstructed at the time of recall. No two reformulations can be identical; some inconsistency is inevitable. Memories change over time, sometimes significantly, and naturally decay, details are forgotten. With rehearsal (talking about the event), some memories can fade, others become distorted and others more vivid.
MEMORIES FOR FACTS, DATES AND OBJECTS	Memory for dates, times, frequency, duration and sequence; proper names; verbatim verbal exchanges; peripheral information; and appearance of common objects is unreliable and may be difficult or impossible to recall. Recall is nearly always reconstructed from inference, estimation and guesswork, and is rarely accurate.
EMOTION AND REMEMBERING	High levels of emotion can impair the encoding of any memory. The recall of autobiographical memory is influenced by mood.
RETELLING	The context in which memories are recalled guides their reconstruction. Memory is influenced by the question eliciting information (closed or open-ended questions) and the way the question is asked. Memories are susceptible to suggestion, more so when the person feels under stress, has low self-esteem, or perceives the interviewer to be critical or negative. There is also variation between information when elicited face-to-face or with self-completing forms.
THE IMPACT OF TRAUMA ON MEMORY & BEHAVIOUR	Those who have suffered traumatic events often display <b>avoidance</b> symptoms; they avoid thinking and talking about the event. They may experience <b>dissociation</b> , at the time of the traumatic event or when recalling it; they cannot remember some or all aspects of the trauma, because (aspects of) the event were not initially encoded. They may display <b>emotional numbing</b> and emotionally detach themselves from the facts they are relating. They may only remember <b>sensory impressions</b> (emotions, sensations, sounds, smells) or flashbacks; only fragments or impressions of the experience may be related. They tend to remember some <b>central details</b> , on which they have focused, at the expense of other peripheral details. <b>Detention</b> may have an impact on the ability to record and retrieve specific details of events. They may rely on general knowledge ( <b>schematic memory</b> ) about situations in preference to recalling specific painful events.
FEAR & LACK OF TRUST	Applicants may lack trust in authorities or interpreters. Some may hold a genuine belief that their persecutors have wide networks in other countries, incl. the country of asylum. Moreover, they may not wish to disclose certain relevant facts for fear of endangering the lives of relatives, friends or associates. Applicants whose fear relates to gender, SGBV, SOGI or trafficking may fear reprisals by family, community and/or traffickers. Applicants may fear reprisals from agents who arranged their travel and entry.
CULTURAL BACKGROUND & CUSTOMS	Diversity in cultural background influences communication. Understanding and interpreting information is culturally determined. Individual cultural backgrounds influence the delivery and interpretation of information. Failure to recognize the cultural relativity of <b>words, notions and concepts</b> can lead to misunderstanding and flawed credibility assessments. <b>Concepts of time, distance, and location</b> may be culturally relative. Concepts of time may differ from those used in Western society; events may be remembered by reference to seasons, religious holidays, festivals, etc.; and birth dates and anniversaries may not be significant in some cultures. An Applicant's <b>cultural background and norms</b> may affect the way his or her relates their account e.g. a woman may have had a secluded life, little communication with strangers or authorities, or is used to a male relative speaking on her behalf.
EDUCATION	An Applicant's level of formal education may affect his or her ability to articulate the reasons for the application; to respond to questions, incl. general knowledge questions on history, geography, political, socio-economic conditions; and his or her understanding of the context of certain events.

# The Credibility Assessment

## – Factors to Take Into Account

### FACTORS AFFECTING THE APPLICANT (CONTINUED)

<b>GENDER</b>	Gender defines identities, status, roles, responsibilities, and power relations among members of a society. Gender roles are socially constructed; they vary across and within societies and cultures, and according to age, religion, ethnic and social origin; they evolve to respond to changes. Gender roles influence the attitudes, behaviour, roles, and activities of males and females; they usually involve inequality and a power imbalance between women and men. Gender roles affect male and female experiences of persecution and serious harm and their asylum claims. The DM should assess an account in the context of an Applicant's gender, intersected with his or her age, culture, religion, family, and socio-economic status, and refrain from conclusions based on stereotypical, superficial, erroneous or inappropriate perceptions of gender.
<b>SEXUAL ORIENTATION AND/OR GENDER IDENTITY (SOGI)</b>	Some LGBTI Applicants may have had to conceal their SOGI to avoid ill-treatment leading to feelings of self-denial, anguish, shame, isolation, self-hatred and psychological harm; they may not initially disclose the real grounds for the application. They may have suffered ill-treatment, discrimination, harassment, and marginalization; gender norms may make it difficult to discuss these. LGBTI Applicants in the process of coming to terms with their SOGI may change their claim during the process. Their experiences are influenced by their cultural, economic, family, political, religious and social context; this influences the way his or her expresses his or her SOGI. The DM should not base credibility assessment on superficial understanding of LGBTI Applicants' experiences, or erroneous/stereotypical assumptions.
<b>STIGMA AND SHAME</b>	Stigma, shame, fear of rejection by family and community may inhibit disclosure. Gender-based violence survivors are often held morally culpable for the act, which is culturally unacceptable and shameful. They may suffer trauma, self-blame, shame, memory loss and distortion. Stigma may also account for lack of documentary or other evidence e.g. of incident reports, COI.
<b>OTHER FACTORS</b>	Age, social status, profession, religion and beliefs, rural or urban background, etc.

### FACTORS AFFECTING THE DECISION-MAKER

The objectivity and impartiality principal requires an approach to the credibility assessment that minimizes subjectivity. The DM should be aware that subjectivity can materialize through:	
<b>DM'S THINKING PROCESSES</b>	If the DM has decided on a conclusion, his or her is more likely to believe the evidence that supports that conclusion, even if it is unsound. A concept, known as the halo effect, is a tendency whereby the DM risks either believing or not believing everything. The halo effect increases the weight of first impressions, and subsequent information may be treated as irrelevant.
<b>DM'S INDIVIDUAL &amp; CONTEXTUAL CIRCUMSTANCES</b>	The DM should not approach credibility assessment from his or her own background and life experiences ("what would I, or someone I know do in this situation?"). The DM should be aware of the influence of his or her own educational background. The DM should not be influenced by his or her views of what is plausible or not. The DM should be aware of the tendency to believe statements because they are linked by logic or associated to beliefs his or her holds.
<b>DM'S STATE OF MIND</b>	The DM should not start with scepticism or a refusal mind-set, which may prejudice and distort the credibility assessment. The DM should not feel personally annoyed or irritated when his or her considers the Applicant has lied. Awareness is the antidote to subjectivity.
<b>DM'S POLITICAL, SOCIETAL AND INSTITUTIONAL CONTEXT</b>	The DM should be aware of the influence that societal, political, institutional contexts that are geared towards preventing irregular immigration may have on his or her mind-set and attitudes. The DM should remember that the objective is protection and must uphold fundamental rights.
<b>REPETITIVE NATURE OF THE TASK</b>	Because of the repetitive nature of the task, the DM may tend to categorize applications into generic case profiles with assumptions regarding credibility.
<b>CASE-HARDENING, CREDIBILITY FATIGUE, EMOTIONAL DETACHMENT, STRESS AND VICARIOUS TRAUMA</b>	Routine exposure to accounts of torture, violence, or ill-treatment can take a psychological toll. Disbelief is a coping strategy but may undermine objectivity and impartiality. Emotional detachment may translate into disbelief and a reluctance to engage with the applicant's account.

# The Credibility Indicators

Credibility assessment refers to the process of gathering relevant information from the Applicant; examining it in the light of all the information available to the DM; and determining whether and which of the statements and other evidence relating to material elements of the claim can be accepted. These accepted facts may then be taken into account in the analysis of the well-founded fear of persecution and real risk of serious harm.

Applications must be examined and decisions taken individually, objectively and impartially, but there is no infallible and fully objective means to assess the credibility of the material facts presented by the Applicant. To minimize subjectivity, credibility indicators should be used. No one indicator is a certain determinant of credibility or non-credibility. DMs must be aware of the assumptions that underlie each indicator, and understand the factors and circumstances that can render them inapplicable and/or unreliable in an individual case (see Factors Affecting Credibility Assessment).

CREDIBILITY INDICATORS	EXPLANATION
<b>SUFFICIENCY OF DETAIL &amp; SPECIFICITY</b>	The DM must assess if the level and nature of the detail provided by the Applicant is reasonable and indicative of a genuine personal experience by someone with the Applicant's individual and contextual circumstances (age, gender, region of origin, education, etc.).
<b>INTERNAL CONSISTENCY</b>	'Internal consistency' relates to consistency within an interview, or within the written and oral statements by the Applicant, or between the statements and documentary or other evidence submitted by the Applicant. It requires a lack of discrepancies, contradictions, and variations in the information provided.
<b>CONSISTENCY OF APPLICANT'S STATEMENTS WITH INFORMATION PROVIDED BY FAMILY MEMBERS OR WITNESSES</b>	Consistency in the facts presented by the Applicant with any statements made by dependants, other family members or witnesses may be considered an indicator of credibility.
<b>CONSISTENCY OF APPLICANT'S STATEMENTS WITH AVAILABLE SPECIFIC AND GENERAL INFORMATION INCLUDING COI</b>	The DM must assess the credibility of the material facts presented by the Applicant against what is generally known about the situation in the country of origin or place of habitual residence; accurate, independent and time-appropriate COI; available specific information; or other expert evidence (medical, anthropological, language analysis, document verification reports).
<b>PLAUSIBILITY</b>	'Plausibility' relates to what seems reasonable, likely or probable.  The DM must be careful not to base a credibility finding on subjective assumptions, preconceptions, conjecture and speculation, but rather on independent, objective, reliable and time-appropriate evidence.

# A Structured Approach to Credibility Assessment

International protection determinations are conducted with a two-stage approach. Stage one is the gathering of relevant information, the identification of the material facts of the application and the determination of whether and which of the Applicant's statements and other evidence can be accepted. Stage two is the analysis of the well-founded fear of persecution and real risk of serious harm.

STEPS	EXPLANATION	<input checked="" type="checkbox"/>
-------	-------------	-------------------------------------

## STAGE ONE: Assessing the Credibility of the Applicant's Statements & Other Evidence

**Note: The opportunity to comment on potential adverse credibility findings must be provided up until a decision is made.**

<b>STEP 1:</b> <b>GATHER ALL THE INFORMATION TO SUBSTANTIATE THE APPLICATION</b>	All statements and other evidence substantiating the claim must be gathered by both the applicant and the DM. Evidence related to the claim may be submitted by the Applicant or gathered by the DM up until the decision is made. Because the Applicant may not know the grounds for international protection, the examination of the facts of the claim should be broad.	<input type="checkbox"/>
↓		
<b>STEP 2:</b> <b>DETERMINE THE MATERIAL FACTS</b>	Once the DM has gathered all the facts in the case, his or her determines which may relate to protection grounds. Decisions on whether to grant status will be made on the basis of an assessment of the material facts of the application. Material facts go to the heart of the application and must be clearly determined.	<input type="checkbox"/>
↓		
<b>STEP 3:</b> <b>ASSESS THE CREDIBILITY OF EACH MATERIAL FACT</b>	In assessing the credibility of each material fact the DM gives due consideration to the credibility indicators in the light of the individual and contextual circumstances of the Applicant and the factors that could affect the DM's interpretation of the information.	<input type="checkbox"/>
↓		
<b>STEP 4:</b> <b>DETERMINE WHICH MATERIAL FACTS ARE</b>		
↓	↓	↓
<b>❶ Accepted Material Facts</b> Accepted facts are consistent, detailed enough, and plausible, whether or not they are supported by documentary or other evidence.	<b>❷ Rejected Material Facts</b> Rejected facts lack sufficient details and are inconsistent and implausible.	<b>❸ Uncertain Material Facts:</b> Uncertain facts which are unsupported by documentary or other evidence, or are facts about which an element of doubt remains.
		↓
<b>STEP 5:</b> <b>CONSIDER WHETHER TO APPLY THE BENEFIT OF THE DOUBT TO FACTS ABOUT WHICH DOUBT REMAINS</b>	Consider applying the benefit of the doubt for each remaining material fact about which an element of doubt remains when the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the Applicant for apparent contradictions, inconsistencies, omissions and implausibilities are reasonable.	<input type="checkbox"/>
↓		
<b>WRITTEN DECISION:</b> <b>STATE CLEARLY WHICH FACTS ARE ACCEPTED AND WHICH ARE REJECTED, STATE REASONS WHY</b>	Outline all accepted material facts that will be taken into account in Stage Two – the well-founded fear and serious harm analysis. These will be the material facts accepted at Step 4 as well as those that are accepted at Step 5 after having been given the benefit of the doubt. State the reasons for accepting and rejecting each material fact.	<input type="checkbox"/>

## STAGE TWO: The Well-Founded Fear and Serious Harm Analysis

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