



## Credibility Assessment in Asylum Procedures

### Expert Roundtable

*Budapest, Hungary, 14-15 January 2015*

The Office of the United Nations High Commissioner for Refugees (UNHCR) convened an Expert Roundtable on Credibility Assessment in Asylum Procedures in Budapest, Hungary on 14-15 January 2015. The meeting was organized with the Hungarian Helsinki Committee (HHC) as part of the "CREDO" projects funded by the European Commission and aimed at improving asylum decision-making in the EU through more structured, objective and protection-oriented credibility assessment and at promoting a harmonized approach that reflects relevant provisions in EU law and international standards.

The participants included asylum adjudicators and managers, judges, lawyers, academics, as well as representatives from non-governmental organizations and UNHCR. Twenty-two experts from EU Member States, Norway, Canada and New Zealand, as well as the European Asylum Support Office (EASO), attended the meeting along with 10 resource persons from the HHC and UNHCR.

The discussions at the Roundtable were informed by the CREDO research and publications<sup>1</sup> and a discussion note which outlined a set of issues, considerations and questions.<sup>2</sup> The aim of the meeting was not to re-open commonly accepted principles or approaches such as, for example, the principles underpinning the credibility assessment, the multi-disciplinary approach to credibility assessment, or the shared burden of proof or duty to substantiate an asylum application. Rather, it was intended to explore in more depth a number of aspects and issues related to credibility

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<sup>1</sup> UNHCR, *Beyond Proof: Credibility Assessment in EU Asylum Systems: Full Report, May 2013*, available at: <http://www.refworld.org/docid/519b1fb54.html> (*Beyond Proof*); Hungarian Helsinki Committee, *Credibility Assessment in Asylum Procedures - A Multidisciplinary Training Manual*, 2013, Volume 1, available at: <http://www.refworld.org/docid/5253bd9a4.html>; and International Association of Refugee Law Judges (IARLJ), *Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive – Judicial criteria and standards*, 2013, available at: [http://www.iarlj.org/general/images/stories/Credo/Credo\\_Paper\\_March2013-rev1.pdf](http://www.iarlj.org/general/images/stories/Credo/Credo_Paper_March2013-rev1.pdf). The results of the CREDO 2 project, a UNHCR Report entitled *The Heart of the Matter: Assessing Credibility when Children Apply for Asylum in the European Union*, December 2014, was not yet available at the time of the Roundtable. This report examines credibility assessment in the context of asylum applications presented by child applicants and provides a deeper understanding of specific challenges and considerations related to child asylum claims in light of practices in Austria, Italy, the Netherlands and Sweden, as well as guidance from jurisdictions beyond the EU. It can be found at: <http://www.refworld.org/docid/55014f434.html>.

<sup>2</sup> This discussion note was prepared ahead of the Roundtable, to facilitate preparations and provide participants with a starting point for some of the areas addressed at the meeting. Relevant parts of this note have been incorporated into the present Summary of Deliberations.





## "BUILDING CREDIBILITY"

SUPPORTING EU-WIDE ACCESS TO KNOW-HOW ON OBJECTIVE CREDIBILITY ASSESSMENT  
*A project led by the Hungarian Helsinki Committee and co-financed by the European Commission*

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assessment that were identified through the CREDO projects as requiring further examination, both from a doctrinal/legal point of view and in terms of their application in practice.

The Roundtable was opened with a presentation of the themes of the meeting, including a perspective on how they emerged from the CREDO research, findings and discussions to date. This was followed by discussions on a number of legal/doctrinal issues and key concepts related to credibility assessment, as well as presentations and exchanges on investigative interviewing methodologies and their possible use in an asylum context.

The following Summary of Deliberations at the Roundtable does not necessarily represent the individual views of participants, of the European Commission or UNHCR, but reflects broadly the themes, issues and understandings that emerged from the discussions. They benefited from rich contributions of specialists from 14 national systems as well as the regional (European) and international levels. It was observed throughout the meeting that discussions that started off with seemingly opposing or divergent positions often led to a convergence of views after analysis and clarification of the use of language and/or the context/circumstances prevailing in different national systems.

Geneva/Budapest  
5 May 2015





## Credibility Assessment in Asylum Procedures Expert Roundtable

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### Summary of Deliberations

#### A. Legal basis for credibility assessment and its place in the determination process

##### *Background and context*

1. The 1951 Convention relating to the Status of Refugees (“1951 Convention”) does not contain provisions on the procedures for determining refugee status. However it is generally recognized that fair and efficient procedures are an essential element in the full and inclusive application of the 1951 Convention.<sup>3</sup>
2. The necessity for States to provide fair and efficient refugee status determination procedures in the context of individual asylum systems stems from the right to seek and to enjoy asylum, as guaranteed under Article 14 of the Universal Declaration of Human Rights, and the responsibilities derived from the 1951 Convention as well as international and regional human rights instruments law, and is acknowledged in relevant conclusions of UNHCR’s Executive Committee.<sup>4</sup>
3. In Europe, EU Member States are also bound by the instruments which form part of the Common European Asylum System, all of which were revised (or ‘recast’) between 2011 and 2013.<sup>5</sup> The Asylum Procedures Directive (APD)<sup>6</sup> and the Qualification Directive (QD)<sup>7</sup>

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<sup>3</sup> See, for example, UNHCR, *Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001, available at: <http://www.refworld.org/docid/3b36f2fca.html>, at paras. 4–5.

<sup>4</sup> See, in particular, Executive Committee Conclusions No. 8 (XXVIII) – 1977 on Determination of Refugee Status; No. 15 (XXX) – 1979 on Refugees Without an Asylum Country; No. 30 (XXXIV) – 1983 on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum; No. 58 (XL) – 1989 on Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection. The importance of access to fair and efficient procedures has also been reaffirmed by the Executive Committee in its Conclusions No. 29 (XXXIV) – 1983; No. 55 (XL) – 1989; No. 65 (XLII) – 1991; No. 68 (XLIII) – 1992; No. 71 (XLIV) – 1993; No. 74 (XLV) – 1994; No. 81 (XLVIII) – 1997; No. 82 (XLVIII) – 1997; No. 85 (XLIX) – 1998; No. 92 (LIII) – 2002. These Conclusions are available at: <http://www.unhcr.org/pages/49e6e6dd6.html>.

<sup>5</sup> Information on the Common European Asylum System can be found at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm).

<sup>6</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *Official Journal of the European Union*, L 180/60, 29 June 2013; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal of the European Union*, L 326/13 of 13 December 2005. Article 8(2)(a) APD requires Member States to ensure that “decisions by the determining authority on applications for asylum are taken after an appropriate examination.” To this end, Member States should ensure that applications are examined and decisions taken

are particularly relevant for the assessment of credibility, although neither Directive explicitly or comprehensively prescribes how the credibility assessment should be carried out. States have put in place different procedures for determining eligibility for international protection, including, in particular, for the assessment of credibility. This includes establishing the facts of a case individually, impartially and objectively.<sup>8</sup>

4. The notion of “credibility” is often understood differently across national asylum systems, in part because this English word does not always find an unambiguous equivalent in translation. Also, asylum procedures have been established within different legal frameworks and traditions, influenced by developments in several fields of law including, for example, evidentiary law, administrative law, refugee law and human rights law. Thus, for example, in some jurisdictions a distinction is made between the credibility (reliability, plausibility, truthfulness, accuracy) of *statements or facts* and the credibility (reliability, trustworthiness) of *a person*, for example as a witness.<sup>9</sup>
5. The meaning given to the term “credibility assessment” also depends on its purpose and place in the eligibility determination process, and in particular, on whether the system in a given country provides for distinct stages for (i) the credibility assessment (as part of establishing the facts) and (ii) the legal analysis (in which these facts are assessed in light of the relevant criteria), or whether the credibility assessment is part of a holistic determination of eligibility for refugee status or other forms of international protection.<sup>10</sup>

#### *Discussions at the Roundtable*

6. Despite the aforementioned differences, participants at the Roundtable generally agreed that the purpose of credibility assessment in asylum procedures is to determine whether an applicant’s statements can be accepted and relied upon in establishing the material facts of the claim. It was also noted that the process of which the credibility assessment forms part

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individually, objectively, and impartially. It follows that the credibility assessment must be carried out individually, objectively, and impartially.

<sup>7</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast), *Official Journal of the European Union*, L 337/9, 20 December 2011. Article 4 QD addresses the assessment of facts and circumstances with regard to qualification for both refugee and subsidiary protection status. Article 4(1) QD, together with Article 4(2) QD, stipulates that it is the duty of the Member State to assess the relevant elements of the application in cooperation with the applicant. Article 4(3) QD states that the assessment of an application should be carried out on an individual basis and lists non-exhaustively some of the factors that should be taken into account. Moreover, Article 4(5) QD states that where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation when five stipulated conditions are met. These provisions provide guidance with regard to the credibility assessment.

<sup>8</sup> This is expressly required under Art 8 APD (see above at footnote 6). It also forms part of the obligations derived from international refugee and human rights law.

<sup>9</sup> See below at para. 26.

<sup>10</sup> See below at paras. 12-15.

generally includes the gathering of relevant information, the identification of the material facts of the application and the assessment of credibility of the applicant's statements in light of all available evidence.

7. The Roundtable explored whether a credibility assessment is necessary in all cases. Several participants emphasized that a credibility assessment should, in principle, always be part of the individualized examination of the claim as a means of assessing the applicant's statements and establishing the facts that form the basis for the determination of the claim for international protection.
8. With reference to the UNHCR *Handbook*, which states that an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record,<sup>11</sup> it was noted that a credibility assessment may be dispensed with only with regard to facts which are clearly established based on the evidence submitted in support of an application, including written and oral statements of the applicant, or other available evidence.<sup>12</sup>
9. While it may be appropriate for an adjudicator to rely on such information without questioning the applicant about facts which are already considered established, participants generally cautioned against shortcuts, for legal and practical reasons. The following considerations were raised during the discussions:
  - i. First, even in cases where key material elements are not in doubt and may appear to be sufficient to determine eligibility for international protection, a requirement to establish the facts related to all other material elements of a claim flows from the right of an applicant to have his or her claim examined to the fullest.
  - ii. Some jurisdictions specifically provide for a duty of adjudicators to consider potentially relevant circumstances even beyond what is raised by the applicant, and to take account of the best possible case for the applicant when exploring the reasons for the claim and establishing the material facts.
  - iii. A full examination of all material facts as the basis for a determination on eligibility also avoids problems resulting from gaps in the available information, either during appeal or review proceedings or in the future, at a time when cessation, withdrawal or revocation of refugee status may become an issue. A

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<sup>11</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 1979, re-issued December 2011, HCR/1P/4/ENG/REV. 3 ("UNHCR *Handbook*"), available at: <http://www.refworld.org/docid/4f33c8d92.html>, para. 41.

<sup>12</sup> One example given was that of a case in which it was established from the outset, based on the information before the decision-making authority at the very start of the process, that the applicant was a close relative of a former Head of State, and that given the country situation, this was sufficient, in and of itself, to support a determination that the person was at risk of harm in the event of return (exclusion issues did not arise in this case).

thorough examination of the applicant's case is also important in view of the possibility that family members may seek to join him or her at a later stage.

- iv. The need for a thorough examination of the facts is not obviated if it appears, for example, that an individual claiming to come from a particular region of the country of origin may be able to access protection in another part of that country.<sup>13</sup> It was noted that even in such cases, an inquiry into the individual's circumstances is necessary to establish the identity and nationality of the applicant<sup>14</sup> and explore any elements which may mean that this possibility is not relevant, or not reasonable, in the particular case.<sup>15</sup>
  - v. From a psychological perspective, clearly establishing and communicating the factual basis for a decision helps an applicant to accept the decision and to move on.
10. It was noted, however, that the scope and depth of a credibility assessment may vary on a case-by-case basis, according to elements identified as material to the claim and relevant for the legal analysis required to determine an application for international protection. The individual and contextual circumstances of the applicant are also relevant in this context. For example, unaccompanied or separated children of a younger age, victims of torture, sexual or gender-based violence or other treatment resulting in trauma, as well as persons with physical or mental health problems will require a highly specific approach in credibility assessment.
  11. Where a claim raises exclusion considerations, the facts related to the possible application of an exclusion clause should always be fully canvassed in the personal interview, and the credibility assessment can never be dispensed with in relation to factual elements that may form the basis for a decision to exclude.
  12. There was broad support among participants at the Roundtable for a staged approach to the determination of applications for international protection, whereby a phase concerned with establishing the facts of a claim precedes the legal analysis and application of the relevant eligibility criteria to the facts which have been established.

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<sup>13</sup> This would be the case if it is determined that the applicant would be able to avail him or herself of an "internal flight or relocation alternative", also referred to as "internal protection alternative".

<sup>14</sup> An example was given of cases in which applicants claiming to be from a particular region of a country for which an internal relocation alternative might be considered were found to be from a different country of nationality altogether, which meant that they did not meet the inclusion criteria of the 1951 Convention for lack of a well-founded fear of persecution in the first place.

<sup>15</sup> For further guidance, see UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, available at: <http://www.refworld.org/docid/3f2791a44.html>.

13. In the EU context, the need for a staged approach has been affirmed by the Court of Justice of the European Union, in its judgment in *M.M.*, in relation to the “assessment of facts and circumstances” in Article 4 QD.<sup>16</sup>
14. It was noted, however, that the steps in the process are not necessarily linear, and that the “stages” or “phases” need not be strictly separated. Rather, they are inter-connected in various ways: it may become clear in the course of the legal assessment, for example, that the facts have not been sufficiently clarified or that there are gaps in the information, which would require a return to the fact-gathering stage. At the same time, the decision-maker needs to be aware of the legal requirements for establishing eligibility for refugee status or subsidiary protection (in the EU context) and be guided by the relevant legal criteria in the process of establishing the facts.
15. Participants also considered the staged approach to asylum application decision-making to be an effective tool to maintain legal rigour in the application of the relevant legal criteria to the facts of a case and to prevent erroneous decision-making practices, for example, where the analysis of a future risk is carried out *without* having sufficiently clarified the material facts and circumstances of the case or even with the explicit presence of doubt regarding a material fact or circumstance. It also provides a good basis for training as well as monitoring the quality of and consistency in decision-making.

## **B. Scope of the credibility assessment, concepts and terminology**

### *Background and context*

16. The term “credibility assessment” is not always used with the same meaning as concerns the nature and scope of the inquiry. It is not always clear whether credibility assessment refers to the credibility of the applicant or of the application; what is meant by “personal” or “general” credibility; whether the assessment is about the credibility (in the sense of accuracy) of facts or of the applicant’s statements about facts (in the sense that they have been truthfully – understood here as “honestly” – made, even if they may not be accurate); how the notions of credibility and reliability are used; and whether credibility assessment is, or ought to be, limited to establishing past and present facts.
17. As UNHCR’s research in the context of CREDO 1 revealed, States may rely on a range of other factors which are applied in a more general way to support a finding regarding

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<sup>16</sup> Court of Justice of the European Union, *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012, at para. 64: “In actual fact, that ‘assessment’ takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.”

“personal” or “general” credibility. Consideration of these factors, and in particular, certain behaviours deemed indicative of a lack of fear of persecution or risk of serious harm, may have a significant impact on the outcome. If such behaviours are found to be present at the outset of the credibility assessment, they may result in the applicant’s statements about material facts of the claim being considered questionable before an examination is undertaken.<sup>17</sup>

18. This notwithstanding, the notions of “personal” or “general” credibility are used in some countries, including (but not limited to) situations where the applicant’s “general credibility” must be established pursuant to Article 4(5)(e) QD.

### *Discussions at the Roundtable*

19. Participants at the Roundtable generally agreed that credibility assessment is not a search for “the truth”, but rather aims at establishing whether the applicant has provided a credible account. Thus, what needs to be assessed is the credibility of the applicant’s statements rather than the credibility of the applicant as a person. The focus needs to be on the applicant’s account of why he or she has left the country of origin and is in need of international protection. The task of the adjudicator is to identify the material facts of the claim and examine the applicant’s statements as well as any other evidence submitted in support of the claim. Any discrepancies in the information provided need to be assessed in light of credibility indicators.<sup>18</sup>
20. A number of participants at the Roundtable expressed the view that the concepts of “personal credibility” and “general credibility” raise serious concerns with regard to their content as well as their added value in legal terms. While it was acknowledged that a person who lies repeatedly is generally not trusted to tell the truth, it was emphasized that in the asylum context it is important to focus on the credibility of the account provided, and to consider whether there are explanations for inconsistencies, lack of detail or previous accounts that were not accepted as credible. It was noted that applicants’ statements are often credible with regard to some aspects but not others, and that the adjudicator needs to consider possible reasons why an applicant may not have provided credible information, including the influence of smugglers or traffickers, advice provided by other applicants or feelings of shame or guilt, etc., and conduct inquiries with a view to establishing the relevant facts.<sup>19</sup> A recent study showed that, whilst growing understanding of post traumatic stress disorder (PTSD) helps adjudicators to distinguish stress and anxiety from an appearance of lying (they can look very similar), where there is both PTSD *and* some concealment or fabrication

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<sup>17</sup> This refers to different kinds of behaviour by the applicant in the country of nationality or former habitual residence and in the country of asylum, including behaviours which are considered indicative of the applicant’s propensity to deception and dishonesty. For a more detailed overview, see UNHCR, *Beyond Proof*, Chapter 6.

<sup>18</sup> See the discussion in Part C.

<sup>19</sup> See also below, at para. 62, with regard to requirement of reasons to explain credibility findings, and Part F on credibility considerations and the asylum interview.



(for example when a person has been trafficked), the resultant confusing presentation may lead adjudicators to infer, incorrectly, that the person is not generally credible.<sup>20</sup>

21. The notions of “personal” credibility or “general” credibility – understood as referring to the credibility of the applicant as a person – are not used at all in some national systems. In one non-EU State, for example, the focus is on the credibility of the account. If an applicant has presented several false claims in the past, this weighs as one credibility consideration among others, and may have relevance in determining whether the claim under review is to be assessed as credible. In other systems, personal credibility is not generally used as a criterion, except in cases where the applicant refuses to cooperate with the adjudicator. Some participants also emphasized that assessing credibility is not a “moral exercise” aimed at judging the truthfulness or the general reliability of a person; the focus should be on an objective analysis of the credibility of the applicant’s statements with regard to material facts and circumstances.
22. With regard to the EU context, which is governed by the specific provisions in Article 4(5) QD, it was noted that the express reference to the “general credibility of the applicant” in Article 4(5)(e) QD is given different interpretations. One interpretation put forward is that it is a separate criterion to be considered as part of the “credibility record” of the applicant, which is determined by balancing the considerations set out in paragraphs (a) to (e) of Article 4(5) QD. Another interpretation is that Article 4(5)(e) QD should be understood as requiring the proper use of Article 4(5) (a) to (d) QD and not as an additional criterion.
23. In this context, it was also observed that Article 4(5) QD refers to the credibility of both the applicant and his or her statements. In proceedings before the CJEU, the Advocate General has referred to the credibility of the applicant in *A, B and C*,<sup>21</sup> whereas she used both terms in *M.M.*<sup>22</sup> It was suggested that Article 4(5) QD sets out the methodological approach for the assessment of the evidence in light of all (confirming and disproving) elements, rather than

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<sup>20</sup> Rogers, H., Fox, S. & Herlihy, J. (2014). The importance of looking credible: the impact of the behavioural sequelae of post-traumatic stress disorder on the credibility of asylum-seekers. *Psychology, Crime & Law*. (doi/abs/10.1080/1068316X.2014.951643). Other extraneous factors may also be influencing the adjudicator. A study in Denmark of 149 families from the Middle East using regression modeling found that being Iraqi, the father’s religion being other than Islam and – most interestingly – the length of the father’s education were strong predictors of being granted refugee (or other humanitarian) status, whilst being a single parent family made it less likely that the family was granted protection. The father being in administrative work rather than manual labour was also associated with a grant of protection. Neither previous exposure to violence nor human rights violations were associated with the granting of status. The authors describe their findings (at p. 462) as “the outcome of a communication process involving asylum-seeking refugees and immigration authorities, each with their backgrounds and interests”. See Montgomery, E. & Foldspang, A. (2005). Predictors of the Authorities’ Decision to Grant Asylum in Denmark. *Journal of Refugee Studies*, 18(4), 454-467, (doi:10.1093/refuge/fei040).

<sup>21</sup> Opinion of Advocate General Sharpston – *A, B, C v Staatssecretaris van Veiligheid en Justitie*, Joint Cases C-148/13, C-149/13 and C-150/13, 17 July 2014.

<sup>22</sup> Opinion of Advocate General Sharpston – *M.M. v. Minister for Justice, Equality and Law Reform, Ireland*, C-277/11, 26 April 2012.

requiring an evaluation of additional psychological elements about the person. This was also considered appropriate in light of the right to be heard.

24. Several participants were of the view that it would be best to dispense with the notions of “personal” or “general” credibility as considerations for credibility assessment. Some reasons for this include:

- Doubts about the added value of these notions for establishing the material facts of a claim;
- Concerns about the subjectivity of findings (influenced by cultural factors and the individual and contextual circumstances of the decision-maker), which often hinge on perceptions of deception and deceptive behaviour; and,
- Risk that such findings are made in reference to immaterial or secondary facts, which then carry over into the assessment of material elements.

25. Where retained as relevant considerations, including where consideration of “general credibility” is required for the purposes of the application of the benefit of the doubt,<sup>23</sup> it was suggested that the use of the notions of “personal” or “general” credibility should be circumscribed, for example, by:

- Elaborating criteria and circumstances which limit its application; and,
- Requiring that decisions explicitly set out the considerations on which such findings are based, with a view to increasing objectivity and facilitating (judicial) scrutiny.

26. In some systems, the notion of “personal” credibility is linked to a use of the term “credibility” (or equivalent in the language of the country concerned) as relating to a person who is worthy of being believed, while referring to “reliability” (or equivalent) when reference is made to the accuracy of the information. In one State, this distinction has been introduced to address concerns about the subjective nature of decision-making, with the aim of encouraging adjudicators to place greater emphasis on the assessment of the material facts of the claim and to limit reliance on the perceived credibility of the applicant in decision-making. Elsewhere, however, the terms “credibility” and “reliability” are understood differently.<sup>24</sup>

27. It was further observed that credibility findings could be made with regard to the applicant’s statements about past and present facts, and that the notion of “future facts” in this context in reality often refers to facts which exist in the present, such as, for example, the applicant’s intention to engage in certain activities. The credibility assessment with regard to the applicant’s statements is to be distinguished from the prospective assessment of a future risk of persecution or other serious harm to the applicant in the event of his or her return to the country of origin.

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<sup>23</sup> See the discussion in Part D.

<sup>24</sup> See also above at para. 4.

28. With regard to the kinds of information, or evidence, to be used when conducting a credibility assessment, participants generally agreed that adjudicators may take into consideration any type of relevant information. The applicant's statements – written or oral – often constitute the preponderant type of evidence, which may or may not be corroborated or verifiable by other types of evidence, oral or documentary, including personal documents or any other materials that may be relevant to the person's claim.
29. It was noted that the term "evidence" in English is not always easily translated into other languages, or that in some national asylum systems certain kinds of information – e.g. the applicant's statements – are not considered "evidence", whereas documents are. In the EU context, Article 3(b) QD expressly provides that the "relevant statements and documents presented by the applicant" need to be taken into account in the assessment of an application for international protection. There was general consensus among the participants at the Roundtable that where the term "evidence" is used in the context of a credibility assessment, it should not be understood as limiting the kinds of information, or elements, that may be taken into consideration by the adjudicator.<sup>25</sup>

### C. Indicators for assessing credibility

#### *Background and context*

30. States are obliged to ensure that applications for international protection are examined and that decisions are taken individually, objectively and impartially.<sup>26</sup> However, there is no infallible and fully objective means to determine whether an applicant's statements are genuine. International and national legal jurisdictions have used credibility indicators against which the applicant's statements and other evidence submitted are assessed, with a view to minimizing the scope for subjectivity in assessing the credibility of the material facts asserted by the applicant.
31. UNHCR's *Beyond Proof* report identifies five credibility indicators, which, when applied appropriately, may be used to guide adjudicators when they are deciding whether to accept an asserted material fact. These are:
- (1) Sufficiency of detail and specificity;
  - (2) 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);

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<sup>25</sup> See also below in Part F. for a discussion of credibility considerations and the asylum interview.

<sup>26</sup> For EU Member States, this obligation is expressly stated in Article 8 (2) APD (see also above at fn. 6). In UNHCR's view, this requirement is applicable not only under EU law, but also under international refugee instruments as well as international human rights law and general principles of law. See UNHCR, *Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001, available at: <http://www.refworld.org/docid/3b36f2fca.html>, at paras. 49-50.

- (3) Consistency of the applicant's statements with information provided by any family members and/or other witnesses;
  - (4) Consistency of the applicant's statements with available specific and general information, including country information, relevant to the applicant's case; and,
  - (5) Plausibility.
32. There are inherent challenges in the effective use of credibility indicators, including those arising from assumptions for example about human memory, behaviour, culture, gender roles, perceptions of and responses to risk, the limits of communication through an interpreter and about how a credible account is expected to be presented. Some of these assumptions may reflect an inadequately informed understanding of the applicant's individual and contextual circumstances, in particular how these circumstances may affect memory and behaviour, and may thus be incorrect in individual cases.<sup>27</sup>
33. With regard to credibility indicators, the focus of this Roundtable was on the notions of coherence and plausibility. In UNHCR's policy guidance, the requirements that a claim be "coherent and plausible" are often mentioned together, such as in the UNHCR *Handbook* (in the context of the conditions for the application of the benefit of the doubt),<sup>28</sup> and in those passages of the *Note on the Burden and Standard of Proof*<sup>29</sup> and the *Note on Interpreting Article 1 of the 1951 Convention*<sup>30</sup> which set out the criteria that must be met for an applicant to have established a credible claim. The *Handbook* refers to the requirement of coherence also in discussing what may be expected from an applicant in the context of establishing a credible claim.<sup>31</sup>
34. Under EU law, Article 4(5)(c) QD requires the applicant's statements to be found "coherent and plausible" as one of the cumulative conditions which must be met where Article 4(5) QD comes into play.
35. As regards the notion of "plausibility", in particular, UNHCR's research in the CREDO 1 project brought up numerous examples of decisions in which statements submitted by an applicant were considered not to be plausible for reasons which suggest that decision-makers relied on this notion intuitively, based on subjective assumptions, preconceptions, conjecture,

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<sup>27</sup> UNHCR, *Beyond Proof*, Chapter 5.

<sup>28</sup> UNHCR *Handbook*, at para. 204 ("The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.")

<sup>29</sup> UNHCR, *1998 Note*, at para. 11 ("Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.") See also para. 12 (concerning the benefit of the doubt) and para. 15 (reference to the requirement of a "plausible and coherent account of why [the applicant] fears persecution" in the IRO Manual).

<sup>30</sup> UNHCR, *Note on Interpreting Article 1 of the 1951 Convention*, available at: <http://www.refworld.org/docid/3b20a3914.html>, at para. 10 ("Credibility is established where the applicant has presented a claim which is coherent and plausible and is therefore capable of being believed.")

<sup>31</sup> UNHCR *Handbook*, at para. 205(iii) ("[The applicant] should be asked to give a coherent application of all the reasons invoked in support of his application for refugee status and he should answer any questions put to him.")

speculation, and stereotyping. Plausibility – perhaps more than other credibility indicators – appears to carry particular risks of being applied in this way.<sup>32</sup>

### *Discussions at the Roundtable*

36. Participants generally agreed that it is not always clear how the notion of coherence as a credibility indicator is different from internal or external consistency.
37. It was noted that from a scientific research perspective, “coherence” and “internal consistency” are different – coherence refers to how elements of an account fit together, whereas consistency is concerned with contradictions, lost information (omissions), additions (commissions) and an increase, or decrease, in the specificity of the information.
38. This is also how coherence and consistency are distinguished and applied in practice in some systems. In one country, coherence is assessed only after all the other indicators have been considered. In other systems, coherence is used a synonym for consistency and may also encompass notions such as cohesion or compatibility of dates within an account. Sometimes, what appears to be a difference in approach is owed to language, which uses the same term for these concepts. In several other countries, however, coherence is not used at all as a distinct credibility indicator.
39. With regard to “plausibility”, the risk of applying this credibility indicator in an overly subjective manner was noted repeatedly during the Roundtable. In one national system, a recent review of its application led policy-makers to stop using plausibility as a credibility indicator altogether, based on the conclusion that plausibility concerns can be examined against other indicators, in particular external consistency. In another system plausibility is relied upon more for making findings supporting the credibility of the applicant’s statements rather than for making findings of implausibility, and it was suggested that the concept may be more helpful if used in this way. In yet another country, adjudicators are instructed not to rely on a single plausibility concern as the basis for determining that a claim is not credible.
40. As one way of safeguarding against decisions influenced by one’s cultural background, personal bias, preconceptions, prejudice or speculation, it was suggested that adjudicators ask themselves specifically why they believe they know what they know, and that they be required to explain their plausibility findings. There was support for the view that implausibility should be understood in a strictly limited sense, referring to an alleged fact or circumstance that is scientifically impossible or extremely improbable (for example, because it goes against the rules of physics). Several participants agreed that any other use of this term opens avenues for interpretations distorted by cultural factors and one’s individual and contextual circumstances.

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<sup>32</sup> As noted in *Beyond Proof*, despite judicial and policy guidance cautioning against the improper use of “plausibility”, the notion is used extensively in State practice, often resulting in inappropriately rejecting an applicant’s statements concerning certain facts, and sometimes the entire claim. See UNHCR, *Beyond Proof*, at pp. 176-184.

41. Participants suggested a number of ways to improve the quality of decisions by making credibility findings more objective, including, in particular, with regard to plausibility.
- i. It was emphasized that decision-makers should be required to include references to the information relied upon in making findings based on plausibility in their reasoning.
  - ii. Setting parameters to ensure that expectations and findings are consistent with scientific research on human memory, behaviour, culture, the limits of translation and interpreting, gender, perceptions of and responses to risk, and about how a credible account is expected to be presented was also considered to be helpful in this regard.
  - iii. Ensuring that adjudicators are well trained on country information, have acquired significant intercultural competencies, and have a sufficient level of specialized knowledge in other disciplines, as well as a requirement that implausibility only be considered in conjunction with other credibility indicators, were also mentioned as recommended ways to make findings on plausibility more objective.
42. Additionally, a suggestion was made to consider the diagnostic value of credibility indicators. It was noted that even where there is a common understanding among adjudicators that such indicators should be applied, this does not necessarily imply that their use leads to outcomes that are consistent and/or accurate.<sup>33</sup> Moreover, reliance on credibility indicators which are considered “generally useful” can be fundamentally misleading in certain cases. For example, in light of current scientific knowledge, victims of torture, sexual violence or other forms of trauma cannot be expected to provide a detailed and coherent account of the trauma they survived; there may be other ways, however, in which such persons express these experiences, and this may be sufficient for the purposes of an international protection claim.<sup>34</sup>
43. Overall, participants highlighted the need for a simple approach to credibility indicators that minimizes the use of similar words and fosters a common global understanding.

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<sup>33</sup> For example, with regard to sufficiency of details, research has shown that there may be significant variation in how different people rate the level of detail of the same account. See Jackson, J. L. & Granhag, P. A. (1995). *The Truth or Fantasy: The Ability of Barristers and Laypersons to Detect Deception in Children's Testimony*. Paper presented at the First World Conference on New Trends in Criminal Investigation and Evidence, The Hague, The Netherlands.

<sup>34</sup> Similarly, it was suggested that in assessing the value of a credibility indicator, it is worth considering the possibility that its use in one sense (or ‘side’ – e.g., ‘the statement is inconsistent’) may be valuable, whereas in another sense (the ‘other side’ – e.g., ‘the statement is consistent’) the same indicator may not predict a particular outcome in terms of reliability. This reasoning does not preclude credibility indicators for which ‘both sides’ predict reliability.

## D. Principle of the Benefit of the Doubt

### *Background and Context*

44. The principle of the benefit of the doubt reflects recognition of the considerable difficulties applicants and decision-makers face when gathering evidence to support the claim. As stated in the UNHCR *Handbook*:

“196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

(...)

204. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to “prove” every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.

205. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant’s general credibility. The applicant’s statements must be coherent and plausible, and must not run counter to generally known facts.

45. UNHCR provided further guidance on the application of the benefit of the doubt when assessing the credibility of asylum claims made by minors, calling for a “liberal application” of the principle in such cases<sup>35</sup> and noting additionally that “the child should be given the benefit of the doubt should there be some concern regarding the credibility of parts of his/her claim.”<sup>36</sup>

46. The need for and relevance of the principle of the benefit of the doubt for the credibility assessment in an asylum context has been acknowledged by the European Court of Human

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<sup>35</sup> UNHCR *Handbook*, at para. 219.

<sup>36</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>, at para. 73.

Rights, 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.<sup>37</sup>

47. Although some EU Member States have included reference to the principle of the benefit of the doubt in national legislation, questions about its exact meaning and proper application remain, including with regard to the stage of the procedure at which the benefit of the doubt may be given. UNHCR's approach (except in cases concerning child applicants) has been to apply the benefit of the doubt at the end of the credibility assessment, after the evidence submitted by the applicant with a view to substantiating his or her claim has been examined in light of credibility indicators, and only if the applicant's general credibility has been established.<sup>38</sup> This view was also expressed in the Supreme Court of Canada by the majority in *Chan*.<sup>39</sup> The instructions issued by the UK Home Office for the consideration of asylum claims and credibility assessment also state that "the benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment. This means that the benefit of the doubt can only be considered after a finding on the material facts that are to be accepted or rejected has been made."<sup>40</sup> In contrast, the United Kingdom's Upper Tribunal (Immigration and Asylum Chamber) held that "in its usual meaning the notion can potentially apply at any stage of the assessment of credibility and is not limited, as it is in paragraphs 203-204 of the Handbook, to consideration of its "end-point"; but even so it cannot to be applied to each and every item of evidence, irrespective of whether there is doubt about it."<sup>41</sup>

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<sup>37</sup> See *R.C. v. Sweden*, no. 41827/07 (*Judgment*), ECtHR, 9 March 2010, para. 50; *N. v. Sweden*, no. 23505/09 (*Judgment*), ECtHR, 20 July 2010, para. 53; *F.H. v. Sweden*, no. 32621/06 (*Judgment*), ECtHR, 20 January 2009, para. 95: "The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof."

<sup>38</sup> UNHCR, *1998 Note*, at paras 11-12 ("In assessing the overall credibility of the applicant's claim, the adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and coherence of the applicant's story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed." (emphasis in the original). See also UNHCR, *Note on Interpreting Article 1 of the 1951 Convention*, at para. 10 ("Once the examiner is satisfied with the applicant's general credibility, the latter should be given the benefit of the doubt as regards those statements for which evidentiary proof is lacking."))

<sup>39</sup> *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, at para. 204: "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts."

<sup>40</sup> UK United Kingdom Home Office, *Considering asylum claims and assessing credibility: instruction*, 30 July 2012, section 4.3.4.

<sup>41</sup> *KS (benefit of the doubt)* [2014] UKUT 552 (IAC), 10 December 2014, at para. 102(b).



### *Discussions at the Roundtable*

48. Participants at the Roundtable strongly affirmed the importance of the principle of the benefit of the doubt as a foundational pillar of refugee law, which rests on ethical, moral and normative grounds and reflects the serious consequences of a wrong decision. In this context, it was suggested that the “error preference” in the context of refugee status determination should generally operate in favour of the applicant.
49. The role of the benefit of the doubt was described both in terms of enabling the adjudicator to make a determination in favour of the credibility of certain aspects of the claim where a decision cannot be made either way after all possible avenues of inquiry have been exhausted, and as a way of taking a “step towards the asylum-seeker” in situations where all the information before the decision-maker remains inconclusive. It was noted that the benefit of the doubt had a role to play at the time when the UNHCR *Handbook* was written, and it continues to be relevant today.<sup>42</sup>
50. How the concept is applied in practice depends on the national asylum system, as the applicable legal framework and overall approach to decision-making are factors that influence its meaning as well as the aspects of the claim that are subject to its application. Several participants expressed concern about the limited use of the benefit of the doubt principle in the practice of some States, while noting erroneous interpretations of the concept in others. In some contexts, the benefit of the doubt has been misunderstood as a general rule of “if in doubt, decide in favour”, to be applied in determining eligibility overall rather than as a basis for credibility findings.
51. In some systems, the principle of the benefit of the doubt is understood to be subsumed in Article 4(5) QD, which sets forth the conditions under which confirmation of aspects of an applicant’s statements which are not supported by documentary or other evidence is not required. In other systems however, Article 4(5) QD is not interpreted to represent the principle of the benefit of the doubt. Some participants noted with concern that if Article 4(5) were to be applied as a list of cumulative conditions *stricto sensu*, it would set the standard so high that the benefit of the doubt principle could hardly ever be applied in practice.
52. In systems with a staged approach to the determination of asylum claims, the benefit of the doubt is generally applied during the stage, or phase, concerned with establishing the facts. In systems where a more holistic approach is applied when determining applications for international protection, the principle will also inform the analysis of the well-founded fear or risk of serious harm. In the latter context, the benefit of the doubt is considered to lower the evidentiary threshold for an adjudicator to grant refugee status.<sup>43</sup>

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<sup>42</sup> Similar general views were expressed in statements which described the role of the benefit of the doubt in the following terms: “the benefit of the doubt is baked into the decision”; “empowers to make positive decisions”; “fills an evidentiary gap”; “stepping into the void an asylum claim”.

<sup>43</sup> See UKUT, KS, 10 December 2014, at para. 102(c)).

## E. Threshold for credibility findings (“standard of proof”)

### *Background and context*

53. In its 1998 *Note on Burden and Standard of Proof* (“1998 Note”), UNHCR states:

“... the term ‘standard of proof’ means the threshold to be met by the applicant in persuading the adjudicator as to the truth of his/her factual assertions. Facts which need to be ‘proved’ are those which concern the background and personal experiences of the applicant which purportedly have given rise to fear of persecution and the resultant unwillingness to avail himself/herself of the protection of the country of origin.”<sup>44</sup>

54. The 1998 *Note* presents the threshold for establishing credibility as follows:

“In assessing the overall credibility of the applicant’s claim, the adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and coherence of the applicant’s story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.”<sup>45</sup>

55. UNHCR’s 1998 *Note* further explains that “in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true.”<sup>46</sup> In other words, the credibility assessment purposefully and positively accommodates and allows for doubt and uncertainty.

### *Discussions at the Roundtable*

56. In the discussions at the Roundtable, it became quickly apparent that national asylum systems have a wide range of approaches to the question of a threshold/standard of proof for credibility assessment, findings of fact and/or well-founded fear of persecution or, in the EU context, other serious harm.<sup>47</sup> Participants emphasized that evidentiary standards in refugee law that have emerged from common law jurisdictions are often difficult or impossible to use or interpret in civil law systems, due to a fundamentally different approach to evidentiary matters.

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<sup>44</sup> UNHCR, *Note on the Burden and Standard of Proof*, 16 December 1998, available at: <http://www.refworld.org/docid/3ae6b3338.html>, at para. 7.

<sup>45</sup> UNHCR, 1998 *Note*, at para. 11 (emphasis in the original).

<sup>46</sup> UNHCR, 1998 *Note*, at para. 12.

<sup>47</sup> The question of the threshold/standard of proof required by the terms “serious reasons for considering” for the purposes of the application of exclusion under Article 1F of the 1951 Convention was not considered at the Roundtable.

57. For example, in some systems, legislation and guidance are silent on any threshold for establishing facts. Elsewhere, the threshold of a *reasonable chance* is applied for both establishing the facts and the existence of a well-founded fear of persecution or other serious harm. In one system, relevant legislation requires the applicant to prove or *substantiate* his or her claim (copying the wording of the UNHCR *Handbook*), whereas in another system, the law stipulates that the *appearance of sufficient indications* of persecution or serious harm is *sufficient* for a grant of refugee status or subsidiary protection. In yet other systems, adjudicators are required by law to make credibility findings on the *balance of probabilities* standard, but in practice the threshold appears to be lower. Moreover, one system applies a *real chance* test as the for determining whether there is a well-founded fear of persecution but does not have a standard of proof for credibility assessment and/or establishing facts – adjudicators are required to decide whether they are *satisfied* as to their findings. In another, there is a higher standard of proof (*balance of probabilities*) for establishing facts and a lower one (*reasonable possibility*) for establishing the existence of a well-founded fear of persecution.
58. The discussions also revealed that terms which are commonly used and understood in a certain way in one national system sometimes recall different notions or find no equivalent notions in others. This is the case, for example, with regard to terms such as “evidence”, “in the round”, “capable of being believed”, “on balance”, “satisfied”, “convinced”, and even the notions of “threshold” or “standard of proof”.
59. Faced with such diverse systems and approaches, no one approach emerged as a common standard for all systems. Yet it was generally agreed that “getting the threshold right” across systems is highly important for the purpose of harmonization and consistency in the adjudication of asylum claims.
60. The appropriateness of requiring the higher threshold used in civil matters in common law systems (balance of probabilities – “more likely than not”) for establishing facts in an asylum case was questioned, as it was considered to be overly demanding. Concern was expressed, in particular, with regard to the application of this threshold in the framework of a two-stage approach that does not allow for uncertainty to be carried forward into the analysis of the well-founded fear: a finding of fact with regard to a particular element could be made on the basis of a 51% likelihood. This finding would then be considered as fully established in the subsequent stages of the process, irrespective of a 49% possibility of error, and thus considerable uncertainty.
61. It was also noted, however, that a clear distinction needs to be made between the level of conviction required for credibility findings, on the one hand, and the degree of risk required to establish the well-foundedness of the applicant’s fear of harm on the other.
62. The requirement for decision-makers to provide reasons to explain credibility findings was emphasized as an important safeguard against reaching conclusions too soon, without consideration of possible alternatives.

63. Overall, the importance of applying a sufficiently permissive approach across systems that reflects the specificities of the asylum procedure, and of finding neutral language to convey key norms, emerged strongly from the discussions.

## F. Credibility considerations and the asylum interview

### *Background and context*

64. The importance of a personal interview with applicants for international protection is generally recognized. There is broad agreement that providing the applicant with the opportunity to fully explain the reasons for the application is an essential component of a fair and efficient procedure for determining claims for international protection, as required under the 1951 Convention, international human rights law and general principles of law. This is reflected in the law and practice of many countries.<sup>48</sup>

65. While the burden of proof, in principle, lies on the applicant, the decision-making authority has a duty to cooperate with the applicant to facilitate the information-gathering process and ensure that all the elements that are material to the claim are brought to light.<sup>49</sup> The *Beyond Proof* report has identified the duties of the determining authority with a view to substantiating applications for international protection as follows:

- Provision of information and guidance to the applicant with regard to his or her duty to substantiate the application and how to discharge this duty;
- Provision of guidance through the use of appropriate questioning during the interview;
- Provision of the applicant with an opportunity to clarify any potential adverse credibility findings; and
- Use of all means at its disposal to gather relevant evidence bearing on the application, including where necessary in support of the application.<sup>50</sup>

66. As the applicant's own testimony is in many cases the primary if not the only source of evidence available, the personal interview is also crucial in enabling the determining authority to

- Identify what facts are material to the applicant's claim;

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<sup>48</sup> In the EU context, Article 12(1) APR requires a personal interview on applications for asylum.

<sup>49</sup> See generally UNHCR *Handbook*, at paras. 195-205. See also UNHCR, *1998 Note*, paras.5-6. For EU Member States, the duty to cooperate with the applicant to assess the relevant elements of the application under Article 4(1) QD includes the duty of the decision-making authority to cooperate actively with the applicant to ensure that all the elements needed to substantiate the application are assembled. See UNHCR, *Beyond Proof*, p. 104.

<sup>50</sup> UNHCR, *Beyond Proof*, Chapter 4.4.

- Gather, as far as possible, from the applicant all the necessary information related to those material facts; and
- Probe the credibility of the applicant's statements with regard to material facts.

67. As noted in *Beyond Proof*, the personal interview will only achieve this if it is conducted in a manner, and in conditions, which are conducive to the most complete and accurate disclosure by the applicant of the reasons for the application for international protection.<sup>51</sup>

68. Credibility considerations are relevant throughout the process of establishing the facts which are material to a case. The credibility assessment and interview are linked in many ways.

69. Credibility considerations inform the way in which the interview is approached and conducted. Just as the eligibility criteria (related to inclusion as well as exclusion) will need to be borne in mind when exploring an applicant's account, the interviewer also needs to assess the information provided by the applicant in light of credibility indicators as the interview proceeds.<sup>52</sup>

70. The manner in which the interview is approached and conducted also has a direct impact on the quantity as well as the quality of the information that is gathered through the interview, and thus on the ability of the adjudicator to conduct a fair assessment of credibility. There are many factors which are relevant in this regard, including, for example:

- What preparations are made before the interview;
- How the applicant is guided and instructed prior to and during the interview;
- What questions are asked;
- How these questions are asked;
- How much detail is elicited;
- Whether, when and how certain aspects of the claim are probed; and
- The quality of interpretation and translation (where applicable).

71. The degree to which the applicant's personal situation and circumstances are taken into consideration both in the preparations and in the course of the interview also plays an important role, as do assumptions on the part of the interviewer. Where the interviewer and the adjudicator are not the same person, the accuracy and quality of written interview reports (in the absence of an audio recording) may also have an impact on the credibility assessment.

72. Where the applicant may not have been given a fair possibility to present and substantiate his or her claim, or where factors such as those mentioned above distort the fact-finding process,

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<sup>51</sup> UNHCR, *Beyond Proof*, at p. 110.

<sup>52</sup> The interviewer needs to decide, for example, whether the information obtained on a particular aspect of the claim is sufficiently detailed and/or amounts to a satisfactory explanation, or whether the applicant's statements on this point need to be probed (further) and/or possibly challenged, either during the same interview or in a complementary interview to be conducted following a first assessment and perhaps some additional research.

the result may be incorrect decisions on credibility. There may be negative credibility findings where an applicant has presented information related to his or her claim truthfully but was unable to do so in a way that convinced the examiner of their credibility, or positive credibility findings where an applicant who is not telling the truth was able to present his or her statements as capable of being believed. Either way, there is a risk that these credibility findings may result in errors in the determination on eligibility.

73. The use of interviewing methods and procedures which are best suited to assist both the applicant and the interviewer (and/or adjudicator) in the process of gathering and establishing the facts of the case is particularly important.
74. The interview should allow applicants to substantiate their claim even if, for some reason, they have difficulties in doing so. The methods and procedures for the interview should make it possible to collect as much relevant and reliable information as possible, while acknowledging the reasons why applicants may misunderstand, have poor or false memory or do not want to disclose information. They should also, however, enable the interviewer to identify those who are concealing or misrepresenting relevant facts.

#### *Discussions at the Roundtable*

75. The Roundtable explored how investigative interviewing methodologies which were initially developed for police interviewing may provide models that can be applied also in the context of determining applications for international refugee protection.
76. This part of the meeting started with a presentation on the experience of the police in Norway, where a case of miscarriage of justice based on a false confession prompted a review of interviewing practices and a shift from interrogation-like interviews to investigative interviews based on scientific research and supported by training in ethics, sociology, psychology and other disciplines as well as interviewing techniques. The “KREATIV” model, developed by the Norwegian Police for interviews with (adult) suspects, victims and witnesses, was adapted from the PEACE model of interviewing used by the British Police, which is based on the theoretically underpinned Cognitive Interview.<sup>53</sup> Both models are aimed at maximizing the quality and quantity of information elicited in an interview. They espouse principles related to communication, rule of law, ethics, empathy, trust, information and scientific knowledge, and may thus serve as a model for interviewing in the field of asylum.
77. KREATIV focuses interviewing methods on six phases: 1) Planning and Preparation 2) Engage and Explain 3) Free Account 4) Probing 5) Closure and 6) Evaluation. In the “Free Account” phase, the interviewee is encouraged to provide information in his or her own terms, with as little interference or interruption by the interviewer as possible. The “Probing” phase which follows enables the interviewer to explore the information presented

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<sup>53</sup> Memon, A., Meissner, C. A. & Fraser, J. (2010). The Cognitive Interview: A meta-analytic review and study space analysis of the past 25 years. *Psychology, Public Policy, & Law*, 16(4), 340-372

in the free account with the credibility indicators in mind, and provides the applicant with the opportunity to explain or elaborate further on aspects of the account that may raise questions or concerns.

78. In the “Probing” phase, KREATIV uses an approach known as “Tactical Interviewing Model” (TIM), which aims at optimizing the value and usefulness of available background information held by the interviewer, for example with regard to an observed inconsistency, be it internally or in light of available external information. This model foresees four steps. The first is to identify potential evidence/credibility concerns. The second step is to try to identify all possible explanations for these concerns. In step three the interviewer explores these by searching for alternative explanations, a process which stimulates open-mindedness. If explanations that have been identified as possibilities in step two are found not to be applicable based on information obtained in step three, the potential evidence/credibility concern is strengthened. When the interviewer feels confident that all possible explanations identified have been explored, he or she can then, in step four, present the potential evidence/credibility concern to the interviewee and ask for an explanation.
79. The TIM approach has been found to provide the decision-maker with a basis for determining to what extent (if any) an observed inconsistency should affect the applicant’s credibility, as it assists truthful interviewees in providing missing information and/or clarifying possible misunderstandings, while enabling the interviewer to identify those who are not presenting a truthful account. A key element in this approach is that the interviewer is aware that he or she proceeds on the basis of hypotheses which may be proven wrong in the course of further inquiries.
80. The Roundtable also heard a presentation on techniques known as “Strategic Use of Evidence” (SUE), which may be used for similar purposes as part of the probing phase of an interview. SUE techniques are based on the anticipation that an interviewee who intentionally presents false information or omits information relevant for the inquiry (e.g., in the asylum context, involvement in excludable acts), will form a hypothesis about what information the interviewer holds and use strategies in order to convince the interviewer that he or she is telling the truth. An interviewer who acts on this insight will be in a better position to reach the interview objectives.
81. An added advantage of SUE is to provide the interviewer with practical tools that can be used to probe potential evidence/credibility concerns. One such tool, or technique, is to assess the information available to the interviewer along a matrix which qualifies it as strong, weak, general or specific, and to decide on this basis *when* to disclose this information (or elements thereof), and *how* to disclose the information. In other words, this approach separates the timing of the use of this information from the framing of the information. It was noted, however, that these techniques have not been tested, to the knowledge of the experts present, with traumatised individuals, where results may be different from those described at the Roundtable.
82. Another investigative interviewing model based on scientific research is the Dialogical Communication Method (DCM). Initially developed for use in interviews with children and vulnerable persons in a police context, DCM has since been adapted to different areas where

interviews are used, including in child welfare, health care and asylum. DCM is used, for example, as the basis for the EASO training curriculum for the personal interview, and an interviewing methodology based on DCM has also been implemented by asylum authorities in Norway.

83. Following these presentations, the Roundtable discussed the ways in which the above-mentioned evidence-based models and techniques can be useful in an asylum context. It was noted that although they were first and foremost designed for traditional law enforcement contexts, there are elements in these models that are highly relevant for asylum interviews, including, in particular, practical tools which may assist in addressing some of the difficulties in interviewing applicants for international protection.
84. One of the difficulties mentioned in this context is the “confirmation bias”, where the interviewer reaches a decision too soon and searches in a certain direction, rather than exploring possible explanations, which in turn may create difficulties at the judicial review stage. The importance of improving the quality of the first-instance interview was underlined in this context. Reference was also made to research suggesting that applicants were more likely to accept negative first-instance decisions if the right questions had been asked at the interview.<sup>54</sup>
85. Participants also emphasized the need to establish the degree of confidence required to conduct an asylum interview. In one national system, the introduction of a meeting between the decision-maker, the applicant, his or her lawyer, and the interpreter a few weeks ahead of the asylum interview to explain the process has resulted in a more effective decision-making process. In other systems, information about the asylum procedure is made available to applicants in the form of videos in the most relevant languages, or, for children, through photo or comic books.
86. It was underlined that the interest and value of a technique such as SUE or an approach like the KREATIV model does not lie in adopting police interviewing techniques in an asylum context, but rather in responsibly and tactically incorporating multi-disciplinary considerations and scientific knowledge into the mind-set and practices of interviewing and assessing credibility in the asylum field, with the aim of improving the quality and reliability of the information.

**UNHCR**  
**5 May 2015**

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<sup>54</sup> Lane, M., Murray, D., Lakshman, R., Devine, C. & Zurawan, A. (May 2013). *Evaluation of the Early Legal Advice Project Final Report* London, UK: Home Office, p.23.