

CHAPTER 6

**ON BEING HEARD IN ASYLUM CASES
EVIDENTIARY ASSESSMENT THROUGH ASYLUM
INTERVIEWS**

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The increasing number of asylum seekers arriving at the end of the 1980s has placed many western countries with the difficult task of distinguishing between people who genuinely fear persecution and people who merely want to improve their life conditions. Empirical studies from the United States,² Canada,³ Germany,⁴ Switzerland,⁵ the United Kingdom,⁶ and the Netherlands⁷ have shown that refugee status determination is a highly complex adjudication process in which legal, as well as psychological, linguistic and cultural factors must be taken into account. In addition, a thorough knowledge of the political context in the different countries of origin is required. Since there is often little documentary evidence about individual circumstances, immigration officers carefully scrutinize the oral testimony of asylum applicants. In recent years, some forensic methods, like language analysis have been developed and put in practice to examine the age or origin of asylum claimants. The main source of information, however, remains the applicant. It is up to her/him to provide as much information as possible about the basis of her/his claim. The applicant, as well as the written report of her/his testimony will circulate through various organizations. Not just immigration officers, but also judges, legal

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² D. Anker, 'Determining Asylum Claims in the United States' *XIX Review of Law and Social Change* (1992) pp. 433–528.

³ R.F. Barsky, *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* (John Benjamins Publishing Company, Amsterdam/Philadelphia, 1994); C. Rousseau, F. Crépeau, P. Foxen and F. Houle 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board' *15/1 Journal of Refugee Studies* (2002) pp. 43–70.

⁴ T. Scheffer, *Fallherstellung und Darstellungsmacht, eine Ethnographische Studie des Deutschen Asylverfahrens* (Universität Bielefeld 1998).

⁵ M.-A. Monnier, 'The Hidden Part of Asylum Seekers' Interviews in Geneva, Switzerland: Some Observations about the Socio-Political Construction of Interviews between Gatekeepers and the Powerless' *8/3 Journal of Refugee Studies* (1995) pp. 305–325.

⁶ H. Crawley, *Breaking Down the Barriers, a Report on the Conduct of Asylum Interviews at Ports* (Immigration Law Practitioners' Association, London, 1999).

⁷ T.P. Spijkerboer, *Gender and Refugee Status* (Aldershot, Ashgate 2000). N. Doornbos, *De papieren asielzoeker, institutionele interactie in de asielprocedure* (The Paper Asylum Seeker, Institutional Interaction in the Asylum Procedure) (Nijmegen: GNI, 2003).

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representatives and Refugee Council workers will use the report of the asylum interview as a starting point for their own contacts with the applicant.

Given the central role of asylum claimants' statements, it is of crucial importance that interviews with asylum seekers are conducted in a profound, patient and objective manner. As Anker and Rousseau *et al.* have already pointed out, special attention must be paid to the vulnerable situation in which most asylum applicants find themselves when being interviewed by immigration officers. This is also recognized in the Handbook of the United Nations High Commissioner for Refugees, which states for example:

‘It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.’⁸

The UNHCR Handbook also acknowledges that some asylum seekers might feel reluctance towards officials due to their experiences in their home country. Many are tired, anxious or feel inhibited during the interview.⁹ On the one hand, immigration officers have to bear in mind that such conditions may lead to inconsistencies and contradictions in asylum seekers' accounts. On the other hand, officers have to identify those who fabricate their personal history or who have been instructed by traffickers to withhold information. Officers thus have the difficult task to distinguish facts from fiction. In one of the first empirical studies on the asylum determination process, Anker found a considerable disparity between ‘the law in the books’ and ‘the law in practice’. At the end of the 1980s, the adjudicatory system in the United States was still one of *ad hoc* rules and standards. Despite Supreme Court's decisions, which emphasize for instance the sufficiency of the applicant's own testimony, immigration judges often expected applicants to produce documentary proof. They also applied informal procedural rules. For example, they denounced hearsay evidence, directed applicants to provide short ‘yes or no’ answers, and refused to allow narrative answers. Many judges tended to assess the applications with ‘presumptive scepticism’ and used the hearings primarily as an opportunity to test the applicant's credibility. This attitude undermined the appearance of impartiality. Furthermore, Anker found that ideological preferences and unreasoned and uninvestigated political judgements influenced the determination process. She also highlighted several other problematic factors, such as bureaucratic inefficiencies and problems in foreign language interpretation.¹⁰

⁸ Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR, paragraph 190.

⁹ *Ibid.*, paragraph 198 and 199.

¹⁰ D. Anker, *supra* note 2.

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Anker's findings show many similarities with later findings of researchers in other countries. According to Crawley, who observed interviews at ports in the United Kingdom, many of the communication problems in the interviews stem from a lack of clarity about whether the purpose of the asylum interviews is to gather information or to test the credibility of the applicant's claim for asylum. Immigration officers often have presumptive ideas that most applicants do not meet the criteria for well-founded fear of persecution. Their attitude influences the way they conduct interviews and their willingness to pose the appropriate questions. Crawley also criticizes the linguistic skills and the conduct or role interpreters have in the asylum process.¹¹ Many asylum seekers feel that they do not have sufficient time and room to fully present their case. The interviews usually take only two or three hours. While it is assumed that the interviews are conducted by experienced and professional officers, this expectation was generally not fulfilled by the research findings. It is too easily assumed that 'genuine refugees' are able to present all relevant details at once, while in fact they lack knowledge about the relevance of details for the decision.¹²

In Canada, Rousseau *et al.* have conducted an interdisciplinary study that documents the influence of legal, psychological and cultural factors on the process of refugee determination. The authors focussed on the decision-making process at the Immigration and Refugee Board (IRB), which is the second deciding instance in Canada. The results indicate numerous problems affecting the role and behaviour of all actors: difficulties in evaluating evidence, assessing credibility, and conducting hearings; problems in coping with vicarious traumatization and uncontrolled emotional reactions; poor knowledge of the political context, false representations of war, and cultural misunderstandings or insensitivity. There is a major overlap in the legal, psychological and cultural problems observed. In more than half of the cases there were problems in all three fields, while the other cases showed problems in one or two of the areas. These conclusions were based on forty problematic cases, referred to the researchers by lawyers and health and community workers. All the files had a negative decision that was based on the non-credibility of the claimant.¹³

Although there is an increasing number of studies which point to communication and language problems within the asylum determination process, there are only a few that actually give insight into the way asylum interviews are being conducted.¹⁴ In this chapter, I will present the findings of a Dutch case study that is entirely focussed on the communication between applicants, immigration officers, and interpreters. As there is a growing emphasis on 'front-loading' and accelerating asylum procedures, I decided to focus on the initial stage of the decision-making process when asylum seekers present their case for the first time. In which manner and under which circumstances do immigration officers conduct

¹¹ See also M. Inghilleri, *Translation, Interpretation and Asylum Adjudication* (Economic and Social Research Council, London, 2004).

¹² H. Crawley, *supra* note 6, pp. 59-82.

¹³ C. Rousseau *et al.*, *supra* note 3.

¹⁴ Exceptions are T. Scheffer, *supra* note 4 and R.F. Barsky, *supra* note 3.

interviews? How do they ascertain credibility in encounters with asylum applicants? These and other questions will be addressed. Drawing on observations of the communication between immigration officers and asylum applicants, this chapter discusses the way the Dutch Immigration and Naturalization Department of the Ministry of Justice (hereinafter the IND) deals with questions of credibility and trust. First, I will outline some theoretical and methodological notions and give some background information on interviewing procedures in the Netherlands. Then I will present two illustrative fragments from asylum interviews. This will be followed by an overview of communication problems connected to evidentiary assessment. The findings will then be summarized and discussed in the final section.

6.1. SOME THEORETICAL NOTIONS

My research focuses on the communication between asylum claimants and interviewing officers. By communication, I mean the exchange of information between people who are conscious of each other's presence or intermediary presence (such as presence by telephone or, as is often the case in asylum interviews, communication through an interpreter). A distinction can be made between verbal and non-verbal communication. Literature on non-verbal communication acknowledges that there are very few objective cues for truth and deception.¹⁵ People generally assume that eye contact physical movement and facial expression reveal hidden motives underlying the content of the conversation. However, since these cues have different meanings in different cultures, they can easily be misjudged in intercultural interview settings. Moreover, people are able to control their movements and expressions to a certain extent. Deception is therefore more likely to manifest itself in a lack of movements. There are many lay misconceptions about the nature of truthful communication. Liars and the people who want to expose them are easily caught up in a play in which they try to restrain or reveal *perceived* suspicious behaviour.¹⁶ In an experimental study, researchers showed IND officers video fragments of an actor playing an asylum seeker. They asked the officers to assess his reliability on the basis of body language. The findings showed that officers were neither uniform nor consistent in their assessment. Immigration officers stressed that they were reluctant to draw any firm conclusions based on non-verbal behaviour.¹⁷

The present study focuses on verbal communication. I did find, however, that emotions, whether expressed verbally or non-verbally by asylum applicants, do play a role in the assessment of credibility. In some cases, the IND officers considered the applicant's emotional reactions to be a sign of veracity, whereas in other cases,

¹⁵ B.M. DePaulo, B.E. Malone, J.J. Lindsay, L. Muhlenbruck, K. Charlton and H. Cooper, 'Cues to Deception' 129 *Psychological Bulletin* (2003) pp. 74–118.

¹⁶ *Ibid.*

¹⁷ H. Korzilius and D. Springorum 'De betekenis van lichaamstaal in een gehoorsituatie' ('The Meaning of Body Language in an Interview Setting'). In: E. Huls and B. Weltens, *Artikelen van de Derde Sociolinguïstische Conferentie*. (Delft: Eburon, 1999 pp. 275–286).

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in which officers expected emotions to appear, they perceived the *absence* of emotions as a sign of incredibility. During an emotional outburst, the officers usually introduced an extra break to calm down the applicant. Some officers added a comment to the interview report that the applicant showed emotions. How such notes affect the judgement of adjudicators is hard to say. In the Netherlands, officers other than those who interview the claimants decide about asylum requests. This division of tasks aims at the increase of the objectiveness of the assessment. It underlines the impersonal character of the proceedings and also reflects the idea that decisions should not be influenced by emotions or subjective interpretations.

In all situations, whether in asylum interviews or in normal life, communication requires a continuous interpretation of meanings in which language differences, (sub)cultural differences as well as class and gender differences play a role. These differences become even more apparent in legal settings, in which all participants have pre-defined roles and are expected to behave according to specific rules of interaction and politeness.¹⁸ Communication in asylum interviews is different from everyday conversation due to at least three factors. First, the interlocutors often do not speak the same language. In the vast majority of cases, the officer conducts the interview with the assistance of an interpreter, employed by the Ministry of Justice on a session basis. An interpreter is indispensable in bridging the linguistic gap between the interviewer and the interviewee. Nevertheless, the presence of a third person can also complicate communication, as the interlocutors depend on the translator's interpretation of the questions and replies. Furthermore, this triadic relation may result in the forming of coalitions or in processes of inclusion and exclusion.¹⁹ The IND code of conduct stresses that interpreters are impartial. Their task is to bridge the linguistic gap between the applicant and the interviewing officer, no more. Interpreters may not interfere in the interview or give background information concerning the applicant or his country of origin.²⁰

Secondly, communication in asylum cases is a form of intercultural communication.²¹ Not just the language, but also the total frame of reference is different or perceived to be different. People tend to judge one another on group characteristics, such as profession, residence, gender, religion, ethnicity, lineage, language, and age. Perceived differences often result in prejudices. The subjective perception of 'otherness' plays a dominant role in intercultural communication rather than the actual differences. Literature on intercultural communication often stresses that intercultural encounters gain significance when interlocutors attempt to

¹⁸ J. Gibbons, *Forensic Linguistics: An Introduction to Language in the Justice System* (Blackwell, Malden, 2003) pp. 76–84.

¹⁹ Cf. C. Wadensjö, *Interpreting as Interaction: On Dialogue-Interpreting in Immigration Hearings and Medical Encounters*. (Linköping University, 1992).

²⁰ Code of Conduct Interpreters and Translators, Immigration and Naturalization Department, The Netherlands, November 2001.

²¹ W. Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing' (1986) *International Migration Review* XX2, pp. 230–241.

improve their 'intercultural communicative competence'.²² In this view, one's own cultural background or the cultural background of the 'other' does not have to be the starting point for the interpretations of behaviour, but a 'third perspective'. By adopting a 'third perspective', people are receptive to new ideas and experiences. They are able to better understand the other's position and may try to describe incomprehensible behaviour instead of automatically judging it negatively. Furthermore, they are less ethnocentric; meaning that they are less inclined to value their own culture as superior. Empathy and role taking are considered important methods to improve intercultural competence.²³

Thirdly, communication in asylum cases is a form of institutional interaction: communication within a strictly organized, often bureaucratic context.²⁴ The context structures the content, the duration, and the type of interaction. Institutional communication usually has a question-answer structure. The interviewers are generally professionals, or semi-professionals. They control the topics and determine when applicants may speak. They also structure the report of the encounter. The interviewees, however, are mostly laymen regarding the procedures. For them, the procedure is a once-only experience in which decisions directly affect their personal lives and futures.

6.2. METHODOLOGY

The objective of this study is to offer insights into the everyday practice of the interviewing of asylum claimants. That is why I adopted ethnographic methods. Between October 1999 and July 2001, two researchers (Khalil Shalmashi and I) attended ninety interviews held by immigration officers with asylum seekers. Apart from just a few exceptions, most participants consented to cooperate with the research project, once we had explained to them the aim of the research and had guaranteed their anonymity. It was a well-considered choice to recruit a researcher with a refugee background. As we had expected, it facilitated the contacts with asylum applicants and it enabled us to understand conversations in multiple languages. Shalmashi attended most of the interviews in Arabic, Kurdish and Persian while I attended most of the sessions conducted in English and French. In total, we were able to follow the conversation between the asylum applicant and the interpreter in 41 per cent of the interviews attended. We had access to all the interview sessions and were able to speak informally and at length with immigration officers. We decided not to audiotape the hearings, since a pilot on audio taping substantive interviews had caused a great commotion among IND officers and interpreters in the year before. Many interpreters refused to cooperate in that

²² R.L. Wiseman and J. Koester (eds.), 'Intercultural Communication Competence' XVII *International and Intercultural Communication Annual* (1993) (Newbury Park, Sage).

²³ W.B. Gudykunst and Y.Y. Kim, *Communicating with Strangers; an Approach to Intercultural Communication* (Mc Graw Hill, Boston etc., 2003, fourth edition).

²⁴ P. Drew and J. Heritage (eds.), *Talk at Work. Interaction in Institutional Settings* (Cambridge University Press, Cambridge, 1992).

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experiment, because they felt that colleagues were assessing them on arbitrary grounds.²⁵ The present study draws therefore solely on our own observation reports and the IND reports. The criteria for the observations included the timing and circumstances of the session; the conduct of those present (the applicant, the interviewing officer, the interpreter, and, in some cases, a representative of the Refugee Council); the content of the interview; the appropriateness of the questions asked; interviewing techniques; and the reporting of the encounter.

The presence of a researcher might have influenced the conduct of the interview and the behaviour of some of the interlocutors. We tried to avoid this by keeping quiet and refraining from behaviour likely to distract people. Nevertheless, interviewing officers and interpreters might have made a special effort to perform well in line with professional standards and applicants might have felt somewhat more uncomfortable with an extra person present.

We observed 56 first interviews and 7 substantive interviews at 3 reception centres and 27 substantive interviews at 2 regular asylum centres (a total of 90). The reason we attended more first interviews was that we planned to follow some cases throughout the asylum process, as we did with fourteen applicants.²⁶ For the same reason, we selected a relatively high percentage of asylum applicants from the Middle East, because it was easier to gain access to this group because of language. The study involved 24 different nationalities, including Iraqis, Iranians, Sudanese, Somali, Turks, Afghans, and Syrians (63 male, 27 female). This observational study is part of a broader research project, which also involves the contacts between applicants and their legal representatives. The overall project involves 138 observations and 31 different nationalities.²⁷

6.3. INTERVIEWING PROCEDURES IN THE NETHERLANDS

The Netherlands is a country of destination for many asylum seekers, though the numbers of applications show some remarkable peaks and troughs. At the end of the 1980s, the numbers increased from a couple of thousand to about 20,000 in the early 1990s, with 1994 as the highest year on record with over 50,000 applications. By 2001, this figure had dropped to about 30,000. In 2002, less than 19,000 entrants lodged an asylum claim. In 2003, it concerned 13,400 applications.²⁸ Officers of the Immigration and Naturalization Department assess the applications. Most asylum applicants are interrogated twice. These interviews are not audiotaped. The initial interview takes place immediately upon arrival and concerns their identity, nationality, and travel route. In this first interview, officers place a strong emphasis on dates, time, places, and names. Questions concerning these matters also serve as a check on the identity and nationality when the applicant fails to produce evidence. During the

²⁵ Aron, U. and F. Heide, *Bandopname van het nader gehoor (Audio Taping the Substantive Interview)* (WODC, Den Haag, 1999).

²⁶ Publication forthcoming.

²⁷ N. Doornbos, *supra* note 7.

²⁸ IND Annual Reports.

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initial interview, officers are strictly forbidden to probe on circumstances that might have led to the asylum request since that is the subject of the second interview. If the applicant spontaneously explains why s/he left his/her country, the officer has to refer her/him to the second interview. Whereas professionals, like IND officers, lawyers and judges generally perceive the first interview as a short intake concerning mere formalities, in practice it plays an important role in assessing credibility. Decisions on asylum claims often refer to statements in the first interview. Some of the first interviews take more time and are more extensive than some of the substantive second interviews.

The second session is generally more open in character. In this substantive interview (*nader gehoor*), the IND expects asylum claimants to elaborate on the problems they encountered and the reasons why they left their country. The information forms the basis of the initial decision and subsequent stages of the asylum process. The IND most commonly examines the account's plausibility in two ways. A probing interrogation and confrontations with contradictions or omissions in the applicant's testimony, is a first commonly used method to assess credibility. With the second, the emphasis is on detailed information, which IND officers will verify with country information. The officers draw their questions from a database with questions about, for instance, geographical aspects, and habits and rituals of specific communities. Since the end of the 1990s, the IND has also paid attention to the everyday surroundings of applicants, with questions about local buildings, such as mosques, churches, and hospitals, or questions about local food and cooking. This method of examining credibility is more reliable, but requires detailed country information.

Children from the age of 15 are interviewed separately from their parents; children aged 12–15 only on exceptional occasions with the permission of their parents. Unaccompanied refugee children, however, have been interviewed from the age of four.²⁹ The practice of interviewing minors, sometimes in an adversarial atmosphere without the presence of a legal representative, has recently been subject to criticism by Human Rights Watch.³⁰

In the standard asylum procedure, the substantive interview is conducted after a rest period of at least six days after arrival. In the majority of cases, an IND officer interviews the applicant after about two months. Yet, the IND examines a considerable number of cases in an accelerated procedure at reception centres (*aanmeldcentra*). In 2002, 45 per cent of all asylum claims were rejected within four or five days (48 working hours³¹). In 2001, the accelerated procedure involved 22

²⁹ M. Reneman 'Kinderen in procedure. Over de behandeling van asielerzoekers van alleenstaande minderjarigen' ('Children in the Asylum Procedure, On the Processing of Unaccompanied Minors' Asylum Claims') 2003 *Nieuwsbrief Asiel- en Vluchtelingenrecht*, no. 2, pp. 76–87.

³⁰ Human Rights Watch 'Fleeting Refuge. The Triumph of Efficiency over Protection in Dutch Asylum Policy' 2003 HRW 15/3.

³¹ This excludes hours from 10 pm to 8 am.

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per cent of the applications while the previous year it concerned 16 per cent.³² The standard period of rest does not apply to these cases. In the reception centres, the IND makes a preliminary selection of cases based on country policy, an assessment of the statements in the first interview and information gathered otherwise. Asylum seekers with claims that the IND can probably reject without extensive research are interviewed at reception centres. Asylum seekers with more complex claims are transferred to regular asylum centres. The IND takes the procedural decision to process the case either in the short procedure or in the standard procedure before the applicant has even been interviewed about the reasons for his flight. The accelerated procedure was designed in 1994 to reject manifestly unfounded and fraudulent claims. Since the Aliens Act 2000 has come into force, the only criterion for dealing with cases in the accelerated procedure is whether the claims can be rejected within 48 processing hours without time-consuming investigations.³³ Many scholars, like Spijkerboer in this volume, and human rights organizations³⁴ have recently criticized the use of this broad definition.

In the Netherlands, all applicants have access to free legal aid, whether they are in the accelerated or in the normal determination procedure. However, the lawyer-client contacts in the reception centres are restricted to a maximum duration of two hours for the preparation of the interview and three hours for the evaluation. In most cases, different lawyers conduct these consultations, as lawyers work in shifts. Legal representatives and Refugee Council workers may attend asylum interviews, but cannot question the applicant or interfere during the meeting. In our research group, Refugee Council representatives attended only eleven of the ninety interviews observed and lawyers did not attend any. Most applicants therefore come to the interviews unattended. Legal representatives, assisted by interpreters will translate the IND interview report and discuss it with the client. The applicant has the opportunity to produce comments and corrections to the IND record.

6.4. ASYLUM INTERVIEWS IN PRACTICE

The best way to show how asylum seekers are being heard is by describing and analyzing some particularly illustrative cases. In this section, I will discuss fragments from two interview sessions. In the first case of a minor from Guinea, the officer did not overtly question the credibility of the child's version, though it is obvious that he was not impressed with his statements. In the second case of a young Somali man, both the contents of his statements and the language he spoke during the interview casted doubt on his testimony. During the interview, the officer confronted the applicant with these supposed inconsistencies. I have shortened the

³² *Parliamentary notes*, 19 637, Nos. 484, 559, 652 and 731.

³³ Council of State (*Raad van State*) decisions No. 200103491/1 of 27 August 2002, *Rechtspraak Vreemdelingenrecht* 2001/20.

³⁴ See e.g., Human Rights Watch, *supra* note 30, and the comments of UNHCR, Amnesty International and the Dutch Refugee Council brought forward during a round-table discussion meeting with politicians of 25 September 2003.

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interview fragments and changed or omitted some details, like names, dates, and places, for privacy reasons.

Case 1: Excerpt from an Interview with a Minor from Guinea

[Half-way through the substantive interview]:

Officer: 'Now I would like to request that you provide the reasons why you left your country. I also would like to request that you demonstrate your account as concrete as possible with dates and names. In chronological order, please.'

Applicant (through interpreter): [Asks permission to use the toilet. The officer introduces a five minutes break. Then the interview resumes:] 'I live in [town X] at the border between Liberia and Sierra Leone. Very long ago, a spontaneous attack of rebels . . .'

Officer: 'May I interrupt you for one moment. This is your story. We are aware of the general situation, right?'

Applicant (through interpreter): 'Okay. In December 2000, when the last attack took place, everybody fled. I was not there that day. I left with other friends . . . When we arrived at [town Y], we were afraid for the rebels as well as for the authorities.'

Officer: 'May I go back to your residence [X] for one moment. You were not at home. But did you see any rebels at the time you left with those friends?'

Applicant (through interpreter): We saw armed people and red fire. The whole block had been set to fire.

Officer: 'Okay. Then you arrived in [town Y].'

Applicant (through interpreter): 'That was on the 17th. We thought we had come across rebels, but . . . they turned out to be militiamen who wanted to talk to us. They took us to their post . . .'

[The officer poses some specific questions for clarification, for instance about the names of his friends, whether the applicant had to identify himself to the militiamen, and what rank they had. The applicant relates in detail how he was assaulted. He says for instance]:

Applicant (through interpreter): 'They also broke my arm . . . I had to lie down on the ground and they stepped on my back with their feet. He asked me to look at him and he slapped me if I did so. He said that if I would move, he would shoot me.'

Officer: 'Do you know the rank of this man?'

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Applicant (through interpreter): 'He had one stripe.'

Officer: 'Do you know his name?'

Applicant (through interpreter): 'No. They held me from behind and said: "You will see, you are all rebels. We will kill you one after the other".'

Officer: 'I do not need to hear all this word for word. The broad outlines will do for me. I do not have to hear every word they were saying.'

Applicant (through interpreter): 'They put us in a military van.'

Officer: 'Who "us"?''

Applicant (through interpreter): 'I saw other people in the van. He told us he would bring us to [town S.]. We left on the 8th and arrived on the 10th. They brought us to a large square, the square of [camp A].'

Officer: 'Okay, we go back to the essence of the story.'

Applicant (through interpreter): 'They took me to the building and said: "You are finished" . . .'

[On maltreatment the applicant somewhat later says:] 'During my detention, they tortured and assaulted me. But I do not talk about this, because you told me you do not need to hear about it.'

Officer: 'I find it very important that you report this, but I do not have to hear every blow.'

Applicant (through interpreter): 'At Schiphol [airport, N.D.] the police told me I had red eyes.'

Officer: 'Have you also been tortured in your cell?'

Applicant (through interpreter): 'Yes. We had to walk on our knees and look directly into the sun.'

Officer: 'Okay, so this is your story.'

Applicant (through interpreter): 'Yes.'

Officer: 'In a moment, I will ask you some more questions on things that are not yet clear to me. But for now, this is the essence of your story. Have I given you the room to tell me all what you wanted to say?'

Applicant (through interpreter): 'Yes.'

Comments

The guidelines state that interviewing officers first have to give the applicant the opportunity to speak freely about his asylum motives and to withhold interrupting questions as much as possible. After this so-called 'free reproduction', the officer may investigate the different aspects of the claim.³⁵ In practice, this 'free reproduction' is not as free as the guidelines suggest. Usually the substantive interview begins with a repetition of questions from the first interview or a confrontation with presupposed contradictory or vague statements. This part of the interview takes place under strict direction of the official and continues in most cases for about an hour. The applicant will be careful in his formulations, since it is obvious that the IND may regard his utterances as being not plausible or contradictory. By the time the 'free reproduction' begins, the atmosphere is often characterized by distrust on both sides. Furthermore, as this example shows, this part of the interview is restricted to the personal reasons for leaving the country that were the immediate cause for the flight.

It is rather easy to criticize the way in which the officer conducted this interview. He strictly controlled the applicant's narration. There was no 'free reproduction' in the sense that the applicant first had the opportunity to relate his own story. He restricted the applicant in providing background information, which might be important for a good understanding of his case. In his formulations, he showed little consideration for the minor age of the applicant, as he gave the applicant confusing and contradictory instructions. For instance, he stated that he is mainly just interested in the 'broad outlines', whereas he himself posed some detailed questions. He also remarked that 'the essence of the story' had already been told, while in fact the claimant had been given little opportunity to elaborate on his detention and flight reasons. Consequently, his testimony remains superficial. Fragments like the one above are written in the report as a continuing statement, followed by the standard note: 'This statement has been given by Mr. [name] almost without interrupting questions.' The questions following the 'free reproduction', on the contrary, are in most cases written literally.

Without trivializing this criticism, it is also important to bear in mind that officers do face a difficult task. They have to guide the conversation and control the communication between the interpreter and the applicant. The reporting of the session demands special attention. After getting an answer to one question, the official already poses the next question, meanwhile writing down the reply to the first question. If, at times like this, the meeting is disturbed by a telephone call or a request from a colleague, the reporting demands even more concentration. It requires a sound knowledge of the situation in the country of origin and concentration on the applicant's personal problems to come up with relevant questions, which are not part of the standard questionnaire. The officer has to complete the interview within the available time. In the Netherlands, interviewing officers have to interview two

³⁵ Aliens Circular C 12/4.2.

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applicants per day, although they can deviate from this rule and make another appointment. These are just some aspects of the tension between the organizational demands on efficient interviewing conduct on the one hand, and a profound and complete discussion of the asylum account on the other.

The circumstances are also demanding, because the officer is confronted every day with tragic testimonies, which can cause an emotional response in the claimant as well as in the interpreter or himself. As Rousseau *et al.* have pointed out, many actors involved in interviewing asylum applicants unconsciously try to protect themselves from being exposed to traumatic stories. In the case mentioned above, the officer's interventions stating that he does not 'have to hear every blow' and that 'the broad outlines will do', might be considered as such an avoidance mechanism. Direct avoidance is often manifested by an expressed wish not to hear the traumatic events. Indirect avoidance can also become apparent by ignoring or trivializing horrific events or by uncontrolled emotional reactions. Other defensive reactions are cynicism and lack of empathy. These psychological mechanisms affect the communication process.³⁶

As already stated, the interviewing officer in the case mentioned above did not openly question the credibility of the asylum seeker's account. However, since the applicant's account remains shallow, the deciding officer might as well find the statements vague or incomplete and turn down the claim on the grounds of this interview. In the next case, the officer confronted the claimant with his own statements, which he (and the interpreter) did not find convincing. The officer doubted whether the man had the Somali nationality, as he had stated, since he did not speak the Somali language (but Swahili instead). The man recounted that he was born in Kismayo, Somalia, but had lived in Kenya since he was a child.

Case 2: Excerpt from a first interview with a Somali man

[The interpreter has not translated the italicised statements for the asylum applicant]
[translation]

Officer: 'Is your father still alive?'

Applicant: (through Swahili interpreter): 'I left my father in Kismayo.'

Officer: 'Sir, is your father alive?'

Applicant: [speaks at considerable length; but the interpreter translates only the following:] 'Yes, I certainly left the country.'

Officer: [turns to the interpreter:] '*How is the communication going?*'

Interpreter: '*It is going well. He speaks Swahili very well. In fact, too well for someone from Kismayo. He speaks classical Swahili, which is real Swahili.*'

³⁶ C. Rousseau *et al.*, *supra* note 3, pp. 15–18.

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Officer: *'People from Kismayo can't speak Swahili that well.'*

Interpreter: *'Well, I don't know.'*

Officer: 'You left your father. Where were you going next? [The interpreter only translates one short sentence. Judging from the following answer it was probably only the first sentence]

Applicant: (through interpreter): 'Yes.'

Officer: "'Yes" is no answer to my question. Where were you going?'

Applicant: (through interpreter): 'I went to Mombassa.'

Officer: (turns to interpreter:) *'He doesn't want to answer.'* . . . 'How long did your journey by lorry take?'

Applicant: (through interpreter) 'One day.'

Officer: (turns to interpreter:) *'Is that possible one day between Mombassa and Tanzania?'*

Interpreter: *'No, it is far. It is not possible in one day.'*

Officer: 'Hamid, you are sleepy, are you not? Do not fall asleep. You travelled by lorry. After one day you arrived somewhere, and from there you took a plane to the Netherlands.'

Applicant: (through interpreter) 'No, we didn't go directly to the airport.'

Officer: 'But you travelled by lorry to Dar es Salaam.'

Applicant: (through interpreter) 'Yes.'

Officer: 'Hamid, Dar es Salaam and Mombassa are far apart. May be you took other means of transportation?'

Applicant: (through interpreter) 'To me, it is hard to remember whether it was Dar es Salaam or another place. In any case I went from Mombassa to an unknown place and that was the end of my journey.'

[translation]

The officer has summarized this entire fragment in the report:

From Dar es Salaam, you took a plane, how long did your journey by lorry take?

I travelled by lorry for one day. I came to Dar es Salaam by lorry.

But that is far away, it cannot be reached in one day?

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For me it is hard to remember, but I came to an unknown place by lorry and that was the end of my journey.

Comments

Let us look at the input of the three participants: the applicant, the official, and the interpreter. The applicants' contribution is rather vague, as his answers do not correspond with the questions. The first question – whether his father is alive or not – is not answered at all. We learn very little from his report of his journey. The IND officer blames the asylum seeker for his shallow statement; in his view, the applicant is not willing to answer the questions. That, of course, is one possibility: the claimant does not want to answer the questions, because he does not come from Kismayo.

However, when looking at the officer's contribution, it is obvious that he could have put his questions more clearly, step by step, and be somewhat more patient with the applicant. Not all Africans have the same discursive strategies as we have, and as we *expect* them to have.³⁷ The formulations in the report are also ambiguous. The officer did not write all questions and replies down. For instance, in the actual interview he did not ask the first question stated in the report: 'From Dar es Salaam you took *a plane*, how long did your journey *by lorry* take?' To wit, this question is formulated rather ambiguously.

The role of the interpreter also raises question marks. He appears to make a selection of the questions and answers he translates. If he is making selections, that also can explain why the questions and answers do not correspond. Interpreters often play different roles in asylum hearings: the role of neutral intermediary (the role they are supposed to have), the role of adviser, the role of substitute for the officer, the role of ally of the asylum seeker, and the role of informant or expert. In this fragment, we see the interpreter in the role of informant and expert. He provides the officer with background information on the applicant. This information confirms the officers' idea that the man is lying about his nationality: after all, he speaks Swahili too well and he travelled from Mombassa to Tanzania too quickly.] Note that the distance from Mombassa to Dar es Salaam is in fact about 500 kilometres. It may not be impossible to travel this far in one day. By giving this sort of information, the interpreter acts contrary to the code of conduct of his profession. Nevertheless, this fragment shows the interplay between the officer and the interpreter, as the officer actually invites the interpreter to provide this information and uses it immediately to confront the applicant.

A researcher too does not know what is true and false in interactions like this. It is clear though, that all three participants had their impact on the communication. The report very much reflects the view the officer has of the asylum seeker. His own contribution to the interaction, as well as the contribution of the interpreter, is not visible in the report. In all stages of the asylum process, adjudicators examine the

³⁷ J. Blommaert, 'Investigating Narrative Inequality: African Asylum Seekers' Stories in Belgium' 12/4 *Discourse & Society* (2001) pp. 413–449.

applicant's statements, sometimes given just a few days after arrival, under a magnifying glass. Just as Blommaert has described for the Belgium situation, there is an extensive circulation of discourse throughout the different stages based on the reports of asylum interviews. Most decision-making officers and judges regard the reports as fixed texts, because they were compiled according to legitimate procedures.³⁸ Though the reports may not reflect the truth, they become a truth by themselves. A drawback of the division of tasks between interviewing and deciding officers in the Netherlands is that even in the initial stage of the procedure, decisions are entirely based on the written reports of interviews (interviews which are not being audio-taped). There is a strong belief that the actual asylum motives can be derived from the reports, while in fact the reports are compiled according to specific standard questions and reflect the views of the interviewing officers.

6.5. TWO ASSUMPTIONS UNDERLYING CREDIBILITY TESTING

Two assumptions underlie the evidentiary assessment through credibility testing. The first supposition is that a 'genuine' refugee is able to present his case without any inconsistencies and can reproduce his account at any time during the asylum process. There are some psychological and medical studies however, that contradict this ubiquitous assumption. Cohen, for example, refers to several studies that demonstrate that even under normal conditions, people have great difficulty in repeatedly reporting events in a consistent manner. The problems enlarge when people are traumatized, depressed or suffer from insomnia or malnutrition. Such conditions can lead to severe long-term memory defects and loss of concentration, because of which people can become inhibited or inconsistent in their statements. Discrepancies and omissions in statements therefore do not necessarily imply that the applicant is unreliable.³⁹ Herlihy, Scragg and Turner also stress that discrepancies between an individual's accounts are common. Discrepancies are more likely to arise when the details required are peripheral to the interviewee's experience and when the content is traumatic. The number of discrepancies increases with length of time between interviews. Herlihy, Scragg and Turner conclude that inconsistent recall does not necessarily imply that asylum seekers are fabricating their accounts (see also Herlihy in this volume).⁴⁰ In an experimental study with students, Granhag and Strömwall found that truthful and deceptive statements were equally (in)consistent over time. Truthful statements did not contain richer details, as expert lie-catchers, such as judges and police officers, often

³⁸ *Ibid.*

³⁹ J. Cohen 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers' 13/3 *International Journal of Refugee Law* (2002) pp. 293–309. See also C. Rousseau *et al.*, *supra* note 3, pp. 6–7.

⁴⁰ J. Herlihy, P. Scragg and S. Turner 'Discrepancies in autobiographical memories; implications for the assessment of asylum seekers: repeated interviews study' 324 *British Medical Journal* (2002) pp. 324–327.

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suppose.⁴¹ According to Vrij and Winkel who examined police interrogations, people find it easier to lie by simply denying or withholding information rather than by inventing their own story. This is an important argument for giving people the chance to relate their account in their own manner.⁴² Some assistance might be needed though to structure the testimony in a chronological manner.

The second assumption is that the IND conducts asylum interviews under the same conditions and in more or less comparable ways. Only then, discrepancies and omissions in statements are to a certain extent attributable to the input of applicants. The findings of this research differentiate this supposition. As already mentioned, the interview conditions as well as the access to legal representatives is different in the accelerated procedure in the reception centres from the normal procedure in regular asylum seekers centres. In addition, the observations of asylum interviews reveal that while some applicants were allowed more latitude, others were cut short from the start. Some officers treated the applicants patiently and with respect. Others already assumed that the applicant was a liar or an economic migrant before the interview had even started. They sometimes based their assumption solely on a few characteristics derived from the dossier such as sex, age, and country of origin. Some officers confronted applicants with inappropriate or ambiguous questions. In one case, for example, the applicant was asked when he last saw his deceased brother. When the applicant asked whether the officer meant dead or alive, this was considered to be a sign of incredibility and evading the issue. Despite the fact that the officer did not translate the report of the first interview, he constantly told the applicant that his statements were inconsistent. In another case, an applicant's story was disputed because she had said that she had often purchased dried fish at a market while she lived hundreds of miles from the sea. It had not occurred to the official that fish might also be caught in lakes or rivers.

6.6. PROBLEMATIC COMMUNICATION

In more than half of the interviews observed (30 first interviews and 17 substantive interviews) serious communication problems were documented. The researcher regarded the communication process as problematic or very problematic in the light of the objective of the interviews, *viz.* fact-finding, and in the light of the guidelines in the UNHCR Handbook mentioned in the introduction of this chapter. Four interrogations were intimidating in character. Most commonly, there was a conjunction of problems affecting the role and behaviour of all actors. For instance, some officers lacked experience or cultural or political knowledge. Their questions did not connect to the knowledge or understanding of asylum claimants. Their speed of questioning was often too fast or they jumped from one subject to the other. Some

⁴¹ P.A. Granhag and L.A. Strömwall 'Repeated Interrogations: Verbal and Non-verbal Cues to Deception' 16 *Applied Cognitive Psychology* (2002) pp. 243–257.

⁴² A. Vrij and F.W. Winkel, 'Liegen en bedrogen worden' ('Lying and being lied to') in P.J. Van Koppen, D.J. Hessing and H.F.M. Crombag (eds.), *Het hart van de zaak. Psychologie van het recht* (Deventer, Gouda Quint, 1997, pp. 429–449).

let the interpreter take control over the meeting. Some showed prejudiced behaviour, for instance, they assumed that the applicant was unreliable before they had even spoken to them. A few interpreters lacked fluency in one of their languages. They regularly did not translate what the other participants said, but what was a relevant answer to the question according to them. They sometimes interfered in the interview and posed questions themselves. Some of them displayed prejudiced behaviour and talked about applicants in a negative way. In ten out of the ninety interviews attended, interpreters, contrary to their code of conduct, provided the officer with background information on the applicant that heightened the impression that the applicant was unreliable. Some asylum claimants had great difficulty with the emphasis on facts, names, places, and dates. Some did not feel well or were too emotional to speak. Some were reluctant to show that they could not sufficiently understand the questions or the translation, or they were inhibited and suspicious of the interpreter or official.; emotional difficulties] Some appeared to conceal some facts in order to improve their chances. Most of them however, tried to fulfil the image of 'a good client' and co-operated despite language or health problems, while in fact they probably would have gained more from active and assertive behaviour. In twenty-four of the ninety interviews attended, the researchers noticed serious language problems, for instance caused by the use of different dialects. In some cases, neither the applicant nor the interpreter spoke in his/her mother tongue. Only in a few cases were the problems mentioned in the report or was the interview resumed in another language. If applicants do not explicitly mention the problems and make sure themselves that the problems are noted, adjudicators and judges will assume from the report that the communication process went smoothly.

From this enumeration of communication problems, it becomes apparent that not all problems can be solved easily. Given the complex character of the hearings (multilingual, intercultural, and conducted within a strictly institutional context), it is not surprising that communication problems emerge. The way in which officers and interpreters dealt with communication problems however, was remarkable. In most cases, they (sometimes unconsciously) attributed breakdowns in communication to the applicant, trivializing their own role in the communication process. Their own contributions remained unclear from the interview reports. Consequently, future users of the dossiers, such as decision making officers, judges or legal representatives, will regard the content of the report as 'the applicant's own words'.

6.7. CONCLUSIONS

In examining asylum requests, credibility testing has become a routine assessment. Yet testing credibility based on an examination of consistency in asylum accounts can only be effective when a neutral and patient conduct of interviewing is adopted. Even then, prudence is in order, as inconsistencies are common, and more likely to arise, when the events were traumatic to the interviewee. Before an officer can conclude that statements are inconsistent or that the applicant is not willing to comply with the procedure, he has to consider a number of alternative explanations.

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Has the applicant been given sufficient time and opportunity to give all the relevant information? Could the way in which the interviewing officer put the questions, a fast speed of questioning, or a quick change of subjects, have caused the (alleged) contradictions? Has the interpreter properly translated all the utterances made by of the officer and the asylum seeker? Have the different cultural backgrounds of the participants been a barrier in understanding each other? Have the officer and interpreter been objective and neutral? Is the country information used by the IND to compare the statements reliable and up-to-date? Have the applicants been sufficiently informed in advance about the asylum procedure and do they understand which elements in their account are relevant to the decision-making process? The list of questions could be prolonged.

Adjudicators generally regard the communication process as unproblematic unless claimants lodge serious complaints. In fact, as this Dutch case study shows, in more than half of the interviews, communication problems affect the fact-finding process. The contribution of interviewing officers and interpreters to the interaction remains largely invisible in the written reports; communication breakdowns are usually attributed to ‘unwilling’ or ‘non-responsive’ asylum seekers. The mutual distrust and adversarial atmosphere in which officers conducted some interviews could have adverse effects upon the fact-finding process and the assessment of credibility. The communication problems observed in this research are not just found in the Dutch situation. The results are consistent with research findings in other western countries discussed in the introduction of this chapter.

The training of officers and interpreters on subjects like interview techniques and intercultural communication can improve the interview practice. Almost every research study in this field points at the importance of a proper selection and training of immigration workers.⁴³ However, as the Dutch example shows, a more fundamental discussion regarding fast-track procedures might be needed. The findings of this research give rise to a discussion about whether asylum interviews – given their complex multilingual, intercultural and institutional character – are suitable for an examination within just a few days. In the Netherlands, the accelerated asylum procedure is no longer restricted to just fraudulent or manifestly unfounded claims. All claims that according to the Minister of Integration and Aliens Affairs can be properly declined within 48 hours can be handled using this succinct procedure. Since the Aliens Act 2000 has come into force, there is more emphasis on the first stage of the asylum process. The substantive interview is currently the main opportunity for applicants to present their claims. Asylum claimants are rarely being heard in the subsequent stages. The chances of raising new arguments or providing new evidence in the judicial procedure are very small (see Spijkerboer in this volume). Although ‘front-loading’ and accelerating asylum procedures reduce uncertainty for claimants and might be efficient ways for dealing

⁴³ See e.g. C. Rousseau *et al.*, *supra* note 3, p. 24–25.

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with large numbers of asylum applications, they limit the opportunity for claimants to fully present their claim within a safe and patient atmosphere. The asylum seeker needs time to produce testimonial and corroborative evidence and to elucidate his case with the help of a legal representative. When more time is available for examining asylum claims, a more thorough assessment of the asylum motives and reasons for the flight can be made. That will reduce the possibility of either illegitimate claims being erroneously granted, or genuine claims being erroneously rejected.