

## Summary

Dissertation Nienke Doornbos, Institutional communication in the asylum procedure, 2006

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, Canada, Germany, Switzerland, the United Kingdom, and the Netherlands 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 him to provide as much information as possible about the basis of his claim. The applicant, as well as the written report of his testimony will circulate through various organizations. Not just immigration officers, but also judges, legal 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. 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 and in the Dutch guidelines for interviewing officers. 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. 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.

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. In this book, I 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 interviews? How do they ascertain credibility in encounters with asylum applicants? And what do lawyers actually do for their clients? These and other questions are addressed.

### *Some theoretical notions*

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. Communication in asylum interviews is different from everyday conversation due to at least four factors.

First, communication in asylum cases is a form of institutional interaction: communication within a strictly organized, often bureaucratic context. 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 are 'repeat-players'. 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. They are 'one-shotters'. For them, the procedure is a once-only experience in which decisions directly affect their personal lives and futures.

Secondly, the interviews take place in a strict legal setting. The aim of interviews, from this point of view, is fact-finding. In examining asylum requests, credibility testing has become a routine assessment. 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.

Thirdly, communication in asylum cases is a form of intercultural communication. 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 improve their 'intercultural communicative competence'.

Lastly, 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. 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.

### *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: observations and interviews. Between October 1999 and July 2001, two researchers (Khalil Shalmashi and I) attended 90 interviews held by immigration officers with asylum seekers and 48 lawyer-client contacts. The overall project involves 138 observations and 31 different nationalities, including Iraqis, Iranians, Sudanese, Somali, Turks, Afghans, and Syrians (71 per cent male, 29 per cent female). 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 and lawyers.

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, lawyers 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.

### *Asylum interviews in policy and in practice*

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 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 he left his country, the officer has to refer 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.

In the standard asylum procedure, the substantive interview (*nader gehoor*) 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 2004, 42 per cent of all asylum claims were rejected within four or five days (48 working hours). In comparison, in 2001, the accelerated procedure involved 22 per cent of the applications while the previous year it concerned 16 per cent. 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.

The substantive interview is supposed to be more open in character. In this interview, the IND expects asylum claimants to elaborate on the problems they encountered and the reasons why they left their country. The guidelines state that interviewing officers first have to give 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. 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, this part of the interview is restricted to the personal reasons for leaving the country that were the immediate cause for the flight.

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. 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. Both assumptions are criticised in this book. Psychological and medical studies have shown 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.

The findings of my research differentiate the second supposition. The interview conditions as well as the access to legal representatives are 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.

### *Legal Aid*

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. Under these circumstances,

it is very difficult to establish an atmosphere of mutual confidence and trust. 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. However, in the reception centres the reports of the first interviews are seldom fully translated due to lack of time. Traditional lawyer's responsibilities, like advising the client, assessing strong and weak aspects in the asylum requests and conferring with client about the actions to be taken, remain undone. In some cases, neither IND officers nor legal representatives stress the awkwardness of the situation in which asylum seekers find themselves, that is that they may receive a negative decision within 48 hours and they may be detained and expelled. As a result, some asylum applicants are kept ignorant about the implications of their behaviour and the consequences for the procedures.

### *Problematic communication*

Given the complex character of the hearings, it is not surprising that communication problems emerge. In almost all 138 interviews attended communication breakdowns occurred. In more than half of the interviews observed (30 first interviews, 17 substantive interviews and 21 lawyer-client consultations) 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 Dutch guidelines and UNHCR guidelines for interviewing officers. 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 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. 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 a quarter of the 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 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.

The way in which officers, interpreters and even legal representatives dealt with communication problems 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'. 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.

### *Improving the interviews*

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. However, as the Dutch example shows, a more funda-

mental 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 institutional, legal, intercultural and multilingual 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. Although ‘front-loading’ and accelerating asylum procedures reduce uncertainty for claimants and might be efficient ways for dealing 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.