

Credit :

UTokyo Online Education, Refugee Recognition

- Understanding the Essentials 2019 Allan Mackey

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Firstly, some preliminary assumptions :

**1.The word “credibility” and its usage?**

**The confusing use of the term “credibility” -(in English--but  
is it the same in Japanese??)**

**And the need for “CONTEXTUAL DISAMBIGUATION!”- Is it**

- The “credibility” of the whole claim for recognition , or just
- The credibility of the past and present evidence of the claimant?

**Only the latter is valid in this context!**

**The first usage does cause real problems!**

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**2. International judicial basic criteria and standards  
of good practices used in credibility assessment.**

“Standards of good practice, suggested for sound reasoning, that supports valid findings, under the above criteria, have been developed by international refugee judges. They cover a wide range of issues that are applicable in credibility assessment. While appropriate deference to skill and experience should normally be accorded to first instance decision-makers, or full merits review judges, a material failure to adhere to one or more of these standards will often lead to an error of law conclusion on judicial review.”

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### 3. International judicial basic criteria and standards ...

#### **Some preliminary assumptions :**

- Assessment is an onerous task and must work from : National transposing law of the GC, CAT and other international HR conventions etc, and the judicial interpretations both domestic and international
- This guidance is based on accepted international administrative law norms.
- The Issues are so serious only highest standards of fairness are applicable
- Credibility assessment is a tool used to establish the claimant's "accepted profile" as the first issue in assessment of eligibility for *non refoulement* /refugee recognition
- The guidance principles are non exhaustive, and there is overlap between them

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**The IARMJ studies and consensus of internationally accepted overall basic judicial criteria for assessment of credibility are:**

Impossibility

External and Internal consistency

Plausibility

“In the round assessment” or “ the totality of accepted evidence”

Is there sufficiency of detail to make an assessment?

Timeliness of claim is important but hear explanations

Is there “personal involvement” in the accepted evidence?

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## *Credibility - Judicial standards ...*

For ease of use the standards are grouped into four categories : **Substantive**, **procedural**, **vulnerable claimants** and **“residual or benefit of doubt.”**

A full list is set out in the Structured approach paper.

## ***Credibility***

**Substantive** standards we should note are:

- Consistency
- Plausibility
- Equality of arms- *“audi alteram partem”*
- Reasons must be given conclusively – and not *“may have happened”* findings
- Materiality ....

## *Credibility*

- Take an “Objective approach”
- Note the use & misuse of documentation
- Past persecution findings are: - highly relevant  
BUT NOT essential!
- **COI use is – essential \*\***

## ***Credibility***

- Treatment of similar claims – treat each on its own merits !
- Corroboration- is not needed
- Partly credible claims- set out findings on all material facts
- Sur place claims - Earlier lies, good faith/bad faith
- Demeanour – use with extreme caution (but note oral hearings)...

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## ***Credibility***

### ***Judicial Procedural standards -General statement :***

“Credibility assessments may be fundamentally flawed where, through faulty or inappropriate procedures, claimants do not have the opportunity to present their claims, and supporting evidence, fairly and reasonably, both in written and/or oral form” . *They include:*

- Interpreters –bias or incompetence
- Representation-legal or other support
- Time limits – for lodging claims, appeals, translations etc
- Bias, incompetence or conflict of interest of the decision maker or RSD system itself- “Justice must be seen to be done!”

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***Judicial standards-Vulnerable claimants :***

**“A failure to take into account any specific vulnerabilities of claimants can lead to an error of law.”**

“One general standard of good judicial practice only is provided as, not only would it be impossible for such a list to be exhaustive, but also it is frequently the case that the vulnerability of individual claimants may have a number of overlapping causes, It is the totality of their physical and psychological predicament that must be taken into account in the assessment of their evidence.”

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***Judicial standards* - “Vulnerabilities” that may impact on  
credibility include:**

- Children , especially unaccompanied minors
- Women: Domestic Violence, sexual abuse, forced marriage, honour killings/abuse
- Victims of trafficking
- PTSD/past torture/Mental health
- Religious beliefs
- Sexual orientation( “LGBTI” claimants)
- Ethnic, cultural background
- Physical impairments

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*Judicial standards -“residual or benefit of doubt.”*

The international standard submitted by the UNHCR, and accepted by many jurisdictions is:  
“Where residual or remaining doubts are held by assessors/judges in the assessment of some parts of the claimant’s presentation of past and present facts and circumstances, due to unsupported evidence, *prima facie*, where all other evidence is accepted as credible, the benefit of the doubt principle should be applied to those parts where doubts remain.”