

## MARS, Group IV, The children's right to be heard and the credibility assessment in the asylum procedures

The Group has represented a real case of a *talibé* child from Senegal, forced at the age of nine by Quranic teacher at daara to beg in the streets and to work on his property.

For over a decade, Senegalese and international journalists, human rights advocates, and child protection experts have documented and denounced the ongoing exploitation, abuse and neglect of children living in many of Senegal's traditional Quranic schools, or *daaras*.



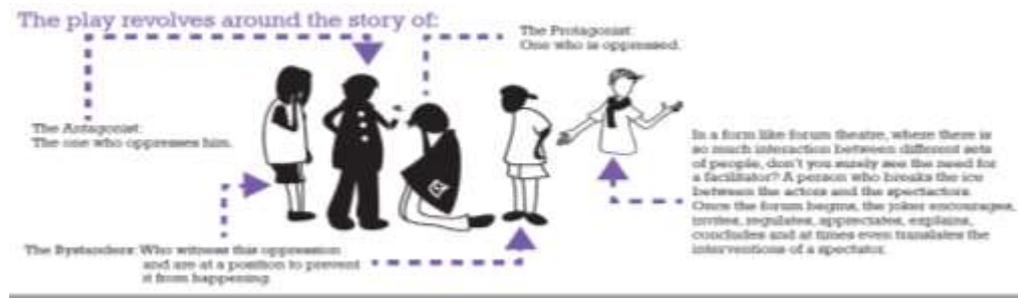
*A painting on the wall of a children's day center run by the NGO Enda Jeunesse Action in Dakar, Senegal, June 21, 2018. The text reads, in French, "No to child begging." © 2018 Enda Jeunesse Action – Centre de Jour*

The Group has decided to show challenges in applying procedural safeguards related to the credibility assessment principles for asylum application brought by children and the child's right to be heard, telling the Aliou's story, focusing on the second stage of the procedure when Aliou was interviewed by the judge.

The methodology used was inspired to the theatre of the oppressed.

Augusto Boal, in his experiments to create a people's theatre" in Brazil in the 1980"s, stumbled upon a democratised model of theatre that turns the stage into a forum where audience and actors can act out strategies for the overcoming of oppression. In the Theatre of the Oppressed 'the audience are not spectators but spect-actors, who intervene in the play performed by taking on the role of the protagonist and enacting what they would do in the situation depicted; showing to the other spect-actors how they would deal the antagonists. The unresolved scene of oppression is presented. It is then replayed with the audience invited to

stop the action, replace the character they feel is oppressed, struggling, or lacking power, and improvise alternative solutions.



Because of time restraints the group could not involve each of the participants in the scene, however this activity want to remember participants that they are the real spect-actors in the real life, future agents of change who can really fight and overcome injustice and oppressions against minors.

So the group hopes and wish all participants that they will use what you have learn in MARS course and during this presentation to find an optimistic ending to all the stories of minors who will need their support!

Below **the script** is reported:

### **Roles:**

**Ilaria Sommaruga: Joker**

**Enrico Broglia: Antagonist**

**Michele Icopini: Protagonist**

**Eva Menichetti: Spect-actor- Cultural Mediator**

**Marina Della Giovanna: Spect-actor- Legal representative/legal guardian**

### **1<sup>st</sup> scene: The Anti-Model**

**The Joker tells the Aliou's story:**

Aliou is a 17-year-old boy from Senegal. He lived with his family in Velingara in Casamance until his father died and his mother married his brother. His uncle, who did not want him at home, sent him at the age of nine to a Koranic school in the village of Madina Gounass. During his five years at the *daara*, the marabout who was supposed to teach him the Koran, forced him and other children to beg and work on his property.

At the age of fourteen, tired of the marabout's mistreatment and harassment, he fled the *daara* and Senegal with the help of a man who knew his condition, without returning home. After several years living in Mali, Burkina Faso, Niger and Libya, he arrived in Italy as an unaccompanied foreign minor and he immediately applied for international protection. He has had no contact with his family since he left.

The territorial commission decides on a denial and gives poor reasons for the decision. The rejection was based solely on the lack of credibility and verisimilitude of the story told by Aliou, motivating that the narrative was poorly contextualised. Aliou then decided to appeal to the specialised section of the court.

**The judge and the minor are on the stage and judge starts interviewing the minor, but they do not speak the same language....Judge looks like really annoyed, stressed and without enough time to carry out the interview.**

**Judge:** *How old are you?*

**Minor :** *Yes*

**J:** *I am 36. you?*

**M.:** [he tries to make judge understand his age showing his fingers]

**J.:** *excuse Me??? I need to know if you are underage*

**M:** *ho 17 anni (in italiano)*

**J:** *Are you an adult?*

**M:** *Cosa? Are u??*

**J:** *so you mean that you are more than 18*

**J:** *Io ho 17 anni*

**E:** *Ok, ok. Next question: Why did you come to Italy?*

**M:** *Asilo (in italiano)*

**E:** *You are looking for asylum? Why?? What is your motivation? Ooooh, We will not go anywhere.....*

**M:** [he shows a scar]

**E:** *Where are you from?*

**M:**.....

**E:** *Gambia?*

**M:** *No*

**E:** *Nigeria?*

**M:** *No*

**E:** *Which means of transport did you use? By feet? [he gesticulates]*

**M:** *Cat Cat [he shows like he is driving]*

**E:** *What??Cat? You are telling me you have travelled with a pet???*

**The joker intervenes, stopping the scene, asking for help to the audience**

**[Joker].** *Freeze! This can't be good. I need someone on the stage to intervene and give an optimistic ending to this terrible story!*

**2<sup>nd</sup> scene: Solution to the oppression**

**The Cultural Mediator intervenes on the scene:**

*Hello, I am the cultural mediator.*

*I am a guarantee for the applicant according to the law, especially by art 12, par-.1 lett. B) (guarantees for the applicants) and art 15. Par. 3, lett. c (requirements for a personal interview) of EU Asylum Procedure Directive.*

*Hi, Aliou I am here to translate your story to the judge. I am also come from Senegal. I know your language and culture . I will help the judge understand your story, don't worry.*

**Minor:** *Thank you very much to help me.*

**Judge:** *So my dear boy, let's see if we manage to reach something. When were you born? Where is your family? How old are you? Come on we do not have the whole day!!!.....[the judge start doing a lot of questions, without giving the minor the time and possibility to answer]*

**The Joker stops the scene again, asking for someone else to intervene on the stage:**

**Joker:** *stop stop....I need someone else on the stage to help Aliou!!*

**The legal representative & legal guardian intervenes on the scene:**

*Hello. I am Aliou's lawyer and also his legal guardian. I am a guarantee for the applicant too, according in particular to article 22 and 25 of the EU Asylum Procedure Directive. Mister Judge, f I may say something, I would bring your attention to the fact that, reading the transcript of the interview that Aliou sustained with the Territorial Commission, it seems that fundamental follow-up questions are lacking: indeed, it would have been important to better understand, first, his dramatic experience in the daara, then how he managed to travel throughout many African countries all alone when he was only fourteen years old and, last, his current relations with his family in Senegal. Being his legal guardian, I can tell that having interrupted all contacts with his mother since he was nine years old, when he was forced by his uncle to join the daara, is heavily affecting his psychological well-being. So, please, take the time to ask him something about all he went through.*

**Judge:** *Ok, ok. I understand. Aliou, tell me your story. I will listen to you!*

**Minor:** *My name is Aliou and I come from Senegal.*

**Judge:** *Nice to meet you, Aliou.*

*I had a quiet childhood until the death of my father (Salif). After that, my life became very hard. My mother (Khady) married one of my father's brothers (Famara) and he wanted me to leave the house where I grew up.*

*One day I have been told by him that I had to leave the house and he took me to the town where I would have joined the daara: I did not want to do that, but I did not have enough power to oppose his decision.*

**Judge:** *Excuse me, what's a daara?*

**Minor:** *A Daraa is a school, where we learn the word of the prophet.*

*He also told me that for a young man like me it was very important to learn the word of the Prophet and not doing so would have been a serious haram.*

*I left my family house when the rainy season was about to begin, and I joined the daara.*

*Since then, I have no longer had contact with my mother.*

**Judge:** *I'm sorry to stop this, milady, but why is he not looking me in the eyes?*

**Cultural Mediator:** *You know, sir, in many cultures, not looking directly into the eyes is actually a sign of respect.*

**Judge:** *Ah, I see. Well, that's interesting, I was thinking the opposite. Ok Aliou, sorry, please go on.*

**Minor:** *I found a lot of children like me there. During the night we all slept together in one room that was locked. Very soon after my arrival there, the marabout forced me to beg in the streets. He tied a jar / can around my neck and If I did not return to the daara with a certain amount of money (collected by begging) the marabout would beat me.*

**Judge:** *Marawhat? Who is this one now? (the judge asks for clarification)*

**Aliou:** *A Marabout is a religious leader in our culture, he teaches the Quran to people.*

*I did not receive any food in the daara, the only food I had was that which was given to me when I was in the street begging.*

*It often happened that after begging, the other children and I were taken to work in the fields of Marabout. My life was like that for a couple years.*

*Once I met a person in the street and he told me that he knew someone that could let me travel to Mali where there was a lot of work and I would have gotten a good job. He told me also that this person would have taken some risks to let me travel so I have to pay a “tax”, and if I had the money, he would take me to him.*

**Judge:** *ok, that’s better, thank you for these clarifications.*

**The oppression was solved, the Joker intervenes to explain how the spect-actors managed to find a solution, with emphasis on how a real life crisis always has room for change.**

**Joker:**

*The assessment of non-credibility expressed in the decision of the Territorial Commission was refuted; the judge, asking the correct questions thank also to the support of important procedural safeguards, like the legal guardian and the cultural mediator, considered the applicant's story credible and consistent also with the specific information on the country of origin. Moreover, it is not possible to affirm that the untruthfulness of his story is the consequence of an insufficiency of details, since on one hand the applicant answered adequately the questions asked by the Commission, on the other hand it is possible that a variety of elements influenced his memory and ability to report his story: the context in which the interviews took place, the level of education, the culture, the translation difficulties, etc.,*

*From the point of view of internal coherence, the story appears to be reasonable, since there are no contradictions or other elements conflicting with the internal logic of the reported facts that would affect the genuineness of the narrative.*

*Considering, then, that abuses and ill-treatments to which the applicant was exposed amount to an accumulation of various violations of basic human rights that can be defined as acts of persecution, according to the art. 9.1 b) of EU Qualification Directive and recital 28 since the child-specific form of persecution and that talibèè children in Senegal can be considered as a members of a particular social group, according to art 10.1 d) QD, on these grounds, the court granted Aliou a refugee status.*

What happened in the performance are only illustrative of some of the specific elements that have to be taken into consideration when assessing a minor's application for international protection.

**Point to remember on credibility assessment:**

A 2015 study by the Hungarian Helsinki Committee sought to summarise the **main hazards in applying to minors ordinary standards used in assessing credibility as follows:**

The child's individual and contextual circumstances, such as her/his developmental stage and personal capacity should be carefully considered when using 'common' credibility indicators.

- **Sufficiency of detail and specificity:** Children typically tell their stories with less detail than adults do. Although they may be able to give the detail, they will need more support to describe it. Children may also have a very different focus and different interests than adults, which will affect the elements on which they are able to provide the most details.
- **Internal consistency** is generally of limited value as a credibility indicator in children. In addition to all the general memory distortions that lead to natural inconsistencies, children are often specifically affected by interrogative suggestibility, by the distorting impact of the lack of trust and the developmental changes of memory (especially in adolescents).
- **External consistency:** A child's statements should be very carefully compared to country information or the testimony of adults. Children are often not aware of certain important information about their country, community, etc. due to limited education, lack of specific interest or developmental stage<sup>[1]</sup>

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<sup>[1]</sup> Hungarian Helsinki Committee, [Credibility Assessment Training Manual](#), Vol. 2, op. cit., fn. 27, p. 114.

## **Points to remember on child's right to be heard and procedural safeguards**

### **Convention on the Rights of the Child (1989)**

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### **European Convention on the Exercise of children's rights (1996)**

#### **Right to be informed and to express his or her views in proceeding**

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request the following rights:

- a) to receive all relevant information;
- b) to be consulted and express his or her views;
- c) to be informed of the possible consequences of compliance with these views and the possible consequences of any decision

#### **Art 24 of the EU Charter**

(1) Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

(2) In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

(3) Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**Recital 33 APD (recast)**

The best interest of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union [...] and the 1989 United Nations Convention on the Right of the Child. In assessing the best interest of the child, Member States should particular take due account of the minor's wellbeing and social development, including his or her background.

**Article 4(1) QD (recast)** does not distinct between adults and minors regarding the duty to substantiate an application for international protection

But there are a **range of procedural safeguards in place for minors**:

**Art. 10(3)(d) APD (recast):**

The personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

**Art. 15(3) (e) APD (recast)** ensures that interviews with minors are conducted in a child appropriate manner.

**Recital 29 APD (recast) and art. 24(3) APD:**

Certain applicants may be in need of special procedural guarantees due, inter alia, to their age [...]. Member States should endeavor to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

**Guarantees for unaccompanied minors :**

**Art 25 (1) APD:**

Member States shall:

(a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

## **GLOSSARY**

**Age assessment:** The process by which authorities seek to establish the chronological age or range of age of a person in order to establish whether an individual is a child or an adult.

**Benefit of the doubt:** A legal principle that allows the authorities to accept/assume the applicant's statements as material facts in the event of uncertainty, unless proven otherwise.

If there is a possibility that the individual is a child, she or he should be treated as such.

If after conducting the age assessment MS are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor. (Article 25(5) APD and UN Committee on the Rights of the Child, General Comment No 6).

The benefit of the doubt shall be applied as broadly as possible in the case of unaccompanied children, who are less likely to have documentary evidence. The benefit of the doubt is a key principle and safeguard in the field of age assessment since none of the

current methods of age assessment are able to determine a specific age with certainty.

Owing to the importance of this principle, benefit of the doubt repeatedly appears as a key procedural safeguard in matters related to children, and also in the age assessment process in the EU asylum acquis (Article 25(5) APD recast). Furthermore, the anti-trafficking directive (ATD) clearly states that benefit of the doubt should be applied when the age is uncertain, as follows.

**Best interests assessment:** (a) A unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned. (b) Consists of evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific child or group of children.

(c) An ongoing procedure for making decisions about what immediate actions are in an individual child's best interests, e.g. protection and care interventions. They are holistic and conducted by staff with relevant professional expertise. (UNCRC, General Comment No 6, paragraph 31 - Article 3 and Article 3(1) CRC - Recitals 9 and 22, Article 2(j) and Article 23(2) RCD - Recital 33 and Article 25(6) APD - Recitals 18, 19 and 38 and Article 20(5) and

Article 31 QD, Recital 35 Eurodac regulation Recital 13 and Article 6 Dublin regulation Article 24, EU Charter of Fundamental Rights)

**Consent:** Informed, free and voluntary agreement. The consent of the child, and his or her representative or guardian in case of unaccompanied or separated children, is required for medical examinations to conduct the age assessment (Article 25(5) APD)

**Right to express their views freely and right to be heard (Articles 12 and 14 CRC and Articles 24 and 41 CFR):** This is a fundamental right with far-reaching effects. It encompasses the child's right to express his or her own views freely and the right to have his or her views taken into account and given due weight in accordance with their age and maturity. In cases where the applicant's age is in doubt, special caution must be taken to prevent subjective or arbitrary considerations (for example, the age at which a child can form his or her own views) when taking the views of the child into account according to their level of maturity. Special consideration should also be given when dealing with persons with disabilities and other special needs (e.g. illiteracy).

Strictly connected to the right to express their views and the right to effective remedy is the right to be heard, before any individual measure which would affect him or her adversely is taken in administrative or judicial proceedings.

### **Further Readings:**

#### **Credibility:**

EASO (European Asylum Support Office), IARLJ-Europa, Valutazione delle prove e della credibilità nell'ambito del sistema europeo comune di asilo, 2018, [https://easo.europa.eu/sites/default/files/EASO-Evidence-and-Credibility-Assessment-JA\\_IT.pdf](https://easo.europa.eu/sites/default/files/EASO-Evidence-and-Credibility-Assessment-JA_IT.pdf); ; for eng: [https://www.easo.europa.eu/sites/default/files/EASO%20Evidence%20and%20Credibility%20Assesment\\_JA\\_EN\\_0.pdf](https://www.easo.europa.eu/sites/default/files/EASO%20Evidence%20and%20Credibility%20Assesment_JA_EN_0.pdf)

Hungarian Helsinki Committee, *Credibility Assessment in Asylum Procedures - A Multidisciplinary Training Manual, Volume 2*, 2015, Volume 2, available at: <https://www.refworld.org/docid/5582addb4.html>

EASO (European Asylum Support Office), Practical Guide: Personal interview, December 2014, <https://easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-EN.pdf>

#### **Theatre of oppressed**

Guide to forum theatre, available online on slideshare, [https://www.slideshare.net/openstagetheater/guide-to-forum-theater?from\\_action=save](https://www.slideshare.net/openstagetheater/guide-to-forum-theater?from_action=save)

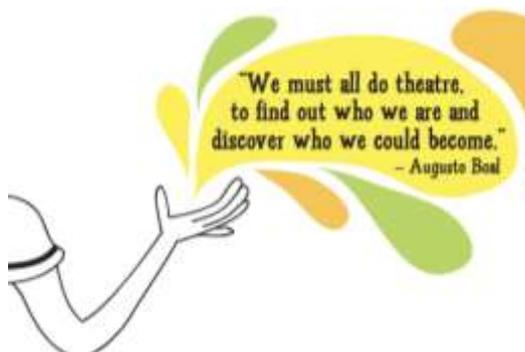
Theatre of the Oppressed A Manual for Educators, Theatre of the Oppressed A Manual for Educators 2012, [https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1010&context=cie\\_capstones](https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1010&context=cie_capstones)

Forum theatre performance, Shannon Ivey and STATE of Reality, TEDxColumbiaSC, January 2015, available at: <https://www.youtube.com/watch?v=vcLcXeXJVDU>

## Talibé Children in Senegal

HRW – Human Rights Watch (Author), PPDH - Platform for the Promotion and Protection of Human Rights (Author): “These Children Don't Belong in the Streets” A Roadmap for Ending Exploitation, Abuse of Talibés in Senegal , December 2019, disponibile all'indirizzo: <https://www.ecoi.net/en/file/local/2021769/ACCORD+Senegal.pdf>

HRW, Human Rights Watch, Senegal: Failure to End Abuses in Quranic Schools, 16 December 2019, disponibile all'indirizzo: <https://www.hrw.org/news/2019/12/16/senegal-failure-end-abuses-quranic-schools>



**Thank you!**

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