



## **Guidelines for assessing vulnerability during criminal investigations, police interviews and criminal proceedings**

### **What is vulnerability?**

Vulnerability refers to a suspect, witness or victim's reduced ability or incapability to exercise their procedural rights. Vulnerability poses an issue when a system or a professional has failed to identify and properly address the issues that place an individual at risk of not being able to exercise these rights. One should therefore not only consider the individual characteristics of the person, but also the situation they find themselves in. Vulnerability is coloured by the interviewer's preconceptions and may be amplified in the relation between the interviewer and the interviewee.

### **Vulnerability has an interactive and dynamic character.**

- **Interactive:** the degree of vulnerability depends on the interaction between the police or other judicial actors, on the one hand, and the suspect/victim/witness and (the actions of) their lawyers, on the other. The vulnerability of a suspect must also always be considered within the context of a case (the seriousness of the case, its personal implications, the degree of publicity, its complexity, how intricate the procedure is, what evidence is available, possible cultural aspects and degree of deprivation of liberty/isolation). Bear in mind that it may be particularly challenging to face suspects or victims of exceptionally severe and/or provoking crimes. If an interviewer experiences a swell of anger or other emotions that challenges their ability to remain professional and let the interviewee provide their version of the events under investigation, one option is to leave the task to someone else.
- **Dynamic:** the degree of vulnerability is variable throughout a criminal investigation. This means that vulnerability must be assessed for each interaction with the suspect/victim/witness. It cannot be determined once and for all solely based on the presence or absence of, for example, a certain diagnosis, disorder, trait, or disability.

Vulnerability must therefore be paid attention to and assessed throughout the entire criminal investigation.

### **Why is it important to give attention to vulnerability?**

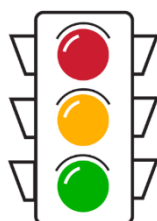
Early identification of vulnerability is crucial. Insufficient attention given to vulnerability heightens the risk of obtaining unintentional and/or inaccurate - or even false - statements and may result in a violation of the right to a fair trial, errors, and even miscarriages of justice. Both international regulations and guidelines and many national regulations require that vulnerability is taken into consideration in legal proceedings. There is, however, little guidance on how to detect vulnerabilities.

### **How do you assess one or more risk factors for vulnerability using this guide and what does it imply?**

The presence of one or more risk factors listed in this guide is only an indicator of vulnerability and not an absolute factor in determining a particular vulnerability. Identifying vulnerability may be difficult if you do not know what to look for, but it is not an impossible task. Some vulnerabilities may be easier to identify (e.g. hearing impairments or inability to speak a language) and can relatively easily be accommodated for. However, other risk factors for vulnerability require that the 'emergency brake' must be pulled (for example, stopping or postponing questioning, or making clinical examinations). The presence of one or more risk factors should lead to alertness and increased vigilance and, if necessary, further steps should be taken to address the potential vulnerability. It is important to note that this guide does not determine which concrete actions should be taken.


### **Note of caution**

The guide was originally written for defence lawyers and is primarily intended to facilitate an increased attentiveness towards the challenges in identifying and dealing with vulnerability during criminal investigations. Gathering information about a person's possible vulnerabilities should ideally be done in the preparatory stage of the interview. Note that some individuals with disabilities have learned specific strategies to hide their communication difficulties. Others may not have insight into their difficulties. Having to answer questions about one's health or disabilities could be both uncomfortable and humiliating and therefore a real "show-stopper." The search for such information must therefore be carefully handled during the rapport-building phase, and throughout the interview. Sometimes such information emerges naturally during an interview.



## 1. ASSESSMENT (PREPARING THE INTERVIEW)



	<p style="text-align: center;"><b>OK</b></p> 	<p style="text-align: center;"><b>Be alert - Monitor closely - Remedies may be required</b></p> 	<p style="text-align: center;"><b>Increased alertness! Consider appropriate action</b></p> 
<p><b>General well-being</b> (How are you?)</p>	The interviewee seems OK given the circumstances.	Anxious, agitated, distracted, less alert, ragged and disorganised.	Excessively emotional (e.g., crying, angry).
<p><b>Deprivation of liberty</b></p> <p>Food and drink</p> <p>Tiredness or fatigue</p> <p>Immediate concerns &amp; specific needs</p>	<p>No need for/ already eaten and drink available.</p> <p>The interviewee seems well-rested and not tired.</p> <p>None or- already addressed.</p>	<p>Stressed/panicking.</p> <p>Difficulty adapting to an unfamiliar environment &amp; different (imposed) rhythm</p> <p>Has not eaten for a long time.</p> <p>Yawning a lot, seems drowsy, diminished attention.</p> <p>Length of responses to questioning: A succession of short 'yes' answers may indicate fatigue or that the questions are not properly understood.</p> <p>Needs to notify someone or cancel an appointment.</p> <p>Family situation: concerns about childcare, family and/or pets, breastfeeding, etc.</p>	<p>Has not slept for 24 hours and/or is clearly very tired.</p> <p>Watch out for wanting to 'escape the situation' to stop/avoid further deprivation of liberty. (I will tell you anything you want if you just let me out of here!)</p>
<p><b>Physical condition</b></p> <p>Check if the interviewee experiences any physical discomfort or pain.</p>	No complaints or pain.	<p>Reading) glasses, hearing impairment, other limitations requiring attention.</p> <p>Need breaks to smoke.</p>	<p>Strongly under the influence of alcohol and/or drugs.</p> <p>Strong withdrawal symptoms</p>



<p><b>Work and financial situation</b></p>	<p>Regular paid work with a regular employer and stable income. No apparent financial problems or issues.</p>	<p>The interviewee does not manage their finances themselves (e.g. under guardianship).  The kind of job the interviewee gets their income from (e.g., the person works at an especially facilitated workplace or job).  Low income or unemployed → people with low income may be eligible to free legal aid.</p>	
<p><b>Origin, nationality, and minorities</b></p>	<p>Long-term residence in the country, fluent in the language of the proceedings.</p>	<p>Poor knowledge of the procedure/system → additional explanation needed. Insufficient command of the language → interpreter is needed.</p>	<p>Interpreter required: Check if the interviewee and the interpreter actually understand each other (e.g. speak the same dialect), that there is no animosity or close affiliation between the interpreter and the client, and that the interpretation is correct and complete.</p>
<p><b>Speech and Language skills (Comprehension and expressing themselves)</b></p>	<p>Almost fluent in the language spoken.  No peculiarities in the way of communicating.</p>	<p>The content of the communication:  Limited vocabulary.  Language use is not appropriate for the client's age.  Difficulty understanding everyday matters and expressions.  Taking utterances literally or understanding them too narrowly.  Difficulty in understanding non-verbal communication</p>	<p>Not or barely able to speak.  If reading a written statement out loud: can the client read it (properly)?  Illiteracy (can be tested by having the interviewee writing their signature).  Uses only capital letters, alternates between capital and small letters, writes</p>

		<p>(gestures, facial expressions).</p> <p>Difficulty in understanding and/or to follow simple reasoning.</p> <p>Is inconsistent, gives inappropriate, or off-topic answers/many digressions. Makes bizarre statements.</p> <p>Uses words in a bizarre way.</p> <p>Form of communication (how they communicate): Rhythm and speed of speech (e.g., very slow, fast, agitated, varying tempo, long pauses, not speaking fluently).</p> <p>Difficulties sequencing events.</p>	<p>childish, or very slowly.</p>
<p><b>Memory</b></p> <p>What is your address, phone number, and date of birth? What day is it today?</p> <p>To what extent does the client seem to trust or distrust his or her memory?</p>	<p>The interviewee seems well oriented in time (when an event took place), space (where), and person (is able to describe well who different people are in relation to others).</p> <p>Expresses that he/she remembers clearly.</p>	<p>Forgets things - also short-term (e.g. unable to retell after being explained their rights).</p> <p>Long-term: poor or no memory of the moment of the facts or general difficulty remembering.</p> <p>Orientation in time, space, and person is not optimal.</p> <p>Distrust in one's own memory → watch out for 'guessing' answers if there is doubt about memory.</p>	<p>Beware also of issues in the yellow column to the left – may require specialist assessment!</p> <p>Adaptations may be needed!</p>
<p><b>Attention and ability to concentrate</b></p>	<p>Alert and attentive.</p>	<p>Diminished attention appears absent-minded.</p> <p>Fidgeting, not able to sit still, constantly looking around, impatient, restless, or very absent. Seems not to fully grasp what is being said.</p>	<p>The interviewee seems completely absent-minded and is impossible to establish any meaningful contact with.</p>

<p><b>Ability for logical reasoning</b></p> <p>Testing the ability to understand their rights can be used as an indication of cognitive skills.</p> <p>Let the interviewee re-tell the content and meaning of their rights to you, for example, at the beginning of the next interview.</p>	<p>Provides a coherent story.</p> <p>Keep in mind that stories may be told in different ways, and that jumping between different times and situations is not uncommon.</p> <p>That is the way memory works. Memories tend to be stored in a non-linear and sometimes fragmented way.</p>	<p>Makes comments that seem not to make any sense.</p> <p>Illogical thought leaps Provides a very incoherent story</p> <p>Jumps randomly from one topic to another.</p>	
<p><b>Procedural rights</b></p> <p>Explain the rights in an understandable language.</p> <p>Avoid using legal jargon.</p> <p>Check if your client understands their rights.</p> <p>Do not ask "did you understand?"</p> <p>Let them explain (retell) their rights in their own words.</p>	<p>The interviewee appears to know and understand their rights and can make an informed decision about exercising them.</p> <p>The interviewee is able to retell their rights in a proper manner.</p>	<p>The interviewee is unable to explain the rights in their own words (try more paraphrasing) → explain again.</p>	<p>The interviewee seems unable to make an independent decision or adhere to it over time (e.g. will most likely be advised to withdraw any statement if consulting their solicitor or guardian).</p>



Keep in mind (but you should not be overly suspicious) that the client may be pretending to have or exaggerating problems. Interviewees may act as if they have certain problems to mislead you or the police and the judicial authorities in the hope of a more favourable outcome of the case. E.g. they pretend to have memory loss - sometimes only for the time of the crime - but remember everything before and after, suddenly not having even basic knowledge, such as not knowing the capital of the country, etc.

## 2. THE INTERVIEW



	OK	Be alert - Monitor closely - Remedies may be required	Increased alertness! Consider appropriate action
<b>Time of the interview</b>	During the day.	Late at night.	Late at night combined with a long interview and a tired client.
<b>Notification of rights by police officers</b>	<p>Clear wording, complete.</p> <p>The importance of rights has been emphasised.</p> <p>If necessary: adapted to match the age/ vulnerability (mental capacity) of the interviewee.</p>	<p>Oral:</p> <p>High pace (too fast or superfluous).</p> <p>Rights trivialised or dismissed as a mere formality.</p> <p>Written:</p> <p>Incomplete set of rights and/or not explained why rights are needed.</p> <p>Difficult wording/overly legalistic.</p>	The interviewee has not been informed of their rights at all.
<p><b>Duration of the interview</b></p> <p>Depending on the interviewees capacity to concentrate.</p> <p>Note that for some</p>	<p>Sufficient pauses taken.</p> <p>For an alert and awake resourceful adult with good ability to concentrate, the interview could go on for a “school hour” without a break.</p>	The interview has been prolonged and/or it has been– a long time since the last break and the client seems to be getting tired.	Very long interviews without a break, and the interviewee is clearly too tired to concentrate.

interviewees, most notably children, their ability to concentrate is very limited – even 5 minutes may be too long.	<p>Follow the flow of the communication. Keep time but do not use a stopwatch to decide when to break.</p> <p>To take a break when changing topics may be appropriate.</p>		
<b>Time span between interviews</b>	Sufficient break(s) between two or more interviews.	Little time between two or more consecutive questionings.	Extensive, long-lasting questioning.
<p><b>Interviewing method and questions asked</b></p> <p>Do not be afraid to ask difficult questions.</p> <p>Be honest.</p> <p>Show empathy.</p> <p>Respect the interviewee's autonomy.</p>	<p>Rapport building and optimal conditions for communication has been facilitated for throughout the interview.</p> <p>The interviewee has provided a first free account of the events under investigation.</p> <p>Only open questions have been asked. (Some people may have difficulty answering open-ended questions. More closed - but non-suggestive - questions may then be asked.)</p> <p>Suggestive questions have been avoided.</p>	<p>You have received answers that are particularly preferable to you – or you have contributed to create incriminating paths of reasoning.</p> <p>You have moved towards wanting to obtain a confession/persuading the interviewee to confess (presuming guilt), or to self-incriminate.</p> <p>Closed (accusatory) questions have been asked.</p>	<p>Sought to convince the suspect to confess (presumption of guilt).</p> <p>Deprived the interviewee of basic needs (e.g. sleep, food, drink, tobacco, medication).</p> <p>Presented false evidence/lying .</p> <p>Made (false) promises.</p> <p>Any threat of, or use of violence (psychological and/or physical).</p>
<p><b>General well-being</b></p> <p>(Note throughout!)</p>	The interviewee seems OK given the circumstances.	Anxious, agitated, distracted, not alert.	Extremely emotional (e.g. crying, very angry).

<p><b>Skills and capacities</b> (See also indicators in the table above)</p>	<p>Language skills meet the requirements of the interview.</p> <p>The questions and wording you use match the interviewee's capacities.</p> <p>No memory problems.</p> <p>Attention and concentration seem OK.</p> <p>Reasoning ability is OK.</p>	<p>Insufficient skills and capacities:</p> <p>Not good enough language skills to understand and answer questions properly</p> <p>Questions are interpreted and answered too literally or narrow</p> <p>Difficulty in understanding non-verbal communication (gestures, facial expression)</p> <p>Memory problems Inattentive and not able to concentrate</p> <p>Looks away a lot Provides a very incoherent story Jumps from one topic to another.</p>	<p>Interviewee makes nonsense comments.</p> <p>Makes illogical leaps of thought</p> <p>Is compliant but motivated by gaining a certain advantage or reward (e.g. at the end of the interview being allowed to make a phone call).</p> <p>Is presented with very different conditions if cooperative or not.</p>
--	--	--	---

### 3. OTHER INVESTIGATIVE STEPS



	<p><b>OK</b></p>	<p><b>Be alert - Monitor closely - Remedies may be required</b></p>	<p><b>Increased alertness! Consider appropriate action</b></p>
<p><b>Reconstruction</b></p>	<p>Plan and review questions to be asked.</p> <p>Facilitate for memory retrieval.</p>	<p>Indicators from interviews also apply here. Pay particular attention to the physical and mental condition of the client: anxiousness, stress, panicking, overwhelmed by the situation.</p>	

**NOTE:** In some jurisdictions other encounters with suspects, witnesses, and victims, such as interviews conducted by investigating judges, or confrontations, are also part of the legal process. In these circumstances all issues and concerns mentioned in this guide should be taken into consideration.

#### 4. DOSSIER



	OK	Be alert - Monitor closely - Remedies may be required	Increased alertness! Consider appropriate action
<p><b>Full interview transcripts should be included</b></p> <p>When was the interview conducted?</p> <p>Duration of the interview</p> <p>Time span between interviews</p> <p>Appropriate physical preparations made?</p> <p>Questions asked (correctly rendered)</p> <p>Comments and observations of the interviewee by other police officers involved (e.g. during arrest).</p>	<input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>	<p>Only an excerpt of the interview written by the interviewing officers is filed.</p> <p>The interview was not well prepared and was a bit ad hoc.</p> <p>Only excerpts of answers included – not really clear what questions were asked.</p> <p>No description of the interviewee’s condition upon interviewing.</p>	<p>Note that a transcript alone may not be a good indicator of what was said in an interview.</p> <p>An audio/ video recording can tell a very different story to even a full written transcript.</p>
<p><b>Audio (visual) recordings of the interview</b></p> <p>Preserves the oral evidence in its original form.</p>	<p>The whole interview is recorded, encrypted, and stored securely according to national procedures and international standards.</p>	<p>Interview recorded – only audio.</p>	<p>No audio or video recording of the interview exists.</p>

Expert reports	No indications of any critical vulnerabilities.	Psychological/psychiatric/physical problems present (e.g. ASD, ADHD, PTSD, intellectual disability, speech pathology, psychotic disorders, or other disorders or neurodivergence). Physical issues such as multiple sclerosis, motor neurone disease, stroke, Parkinson's, etc. also impact communication abilities. Indications of limited cognitive skills and capacities.  Immaturity, low estimated mental age, and/or IQ.	Presence of any serious diagnosis.  Comorbidity – more than one condition or disorder amplifying their total impact.
----------------	---	--	--

© This guide and texts are developed by Prof. Lore Mergaerts (KU Leuven). The initial research was supported by the Research Fund Flanders (FWO), grant no. G083816N. English version prepared in cooperation with Knut D. Asplund, NCHR, University of Oslo. The authors would like to acknowledge networking supported by the COST Action (European Cooperation in Science and Technology) CA22128 ImpleMéndez. Also inspired by Eric Shepherd's "Police station skills for legal advisers: practical reference" (2004).



UNIVERSITY OF OSLO

