

Rape Myth Acceptance in Refugee Status Determination for Persons Fleeing Sexual and Gender-Based Violence: A Case Study on Belgium

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Stream 2 - panel: Refugee Experience and Court Processes



DooaEladL

Persons fleeing SGBV in the Belgian asylum procedure

“The first noteworthy fact is that after learning that she was pregnant, the applicant on her own initiative went to track down T. and asked about him at work. She asked his colleagues if they knew where he was. She states, “I looked everywhere, I didn't find him.” (notes, p. 6). It is incomprehensible that the applicant, having been raped by this man, tried to contact him herself.”

(Eritrea, NEr018_CALL 1 (refusal), 25/11/2022, CALL case no. 280 827)



Persons fleeing SGBV in the Belgian asylum procedure

Rape mythology:

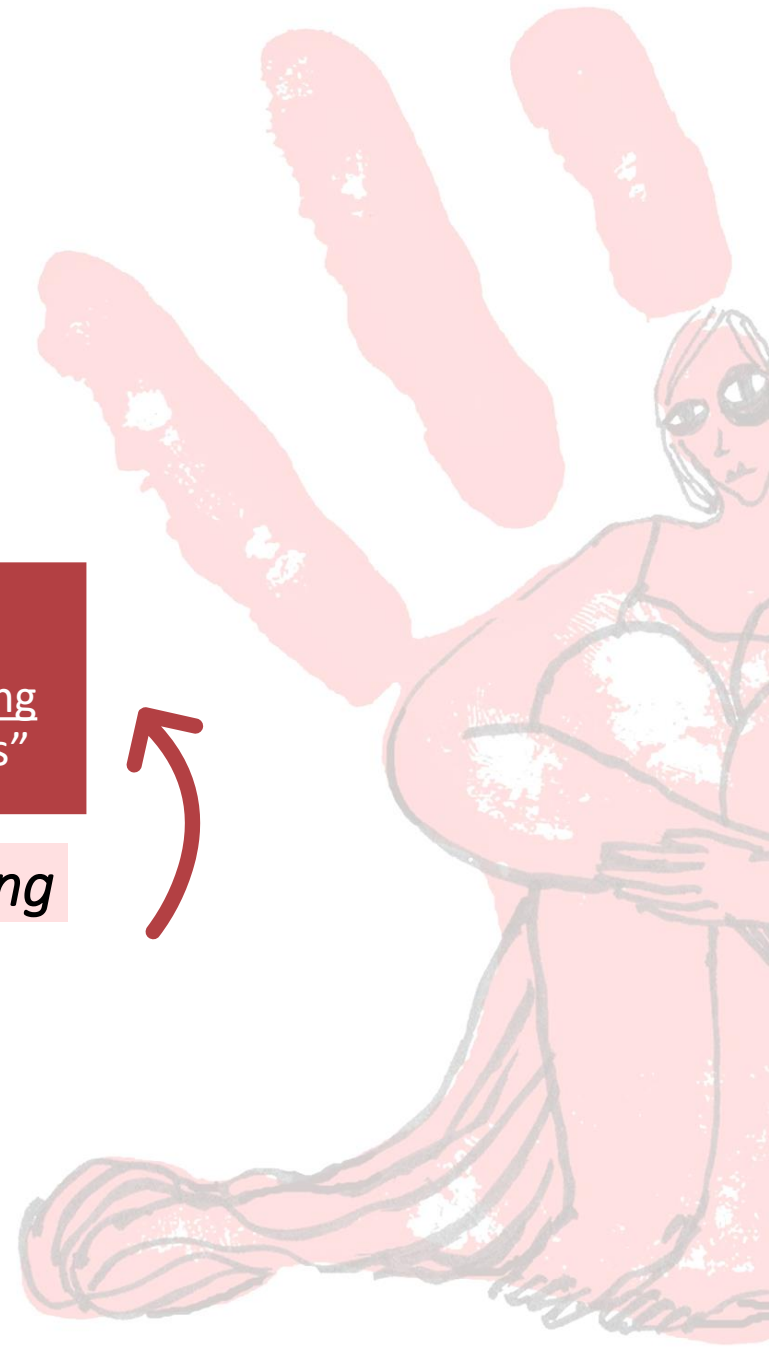
(Breen & Boyce, 2021, p. 5233; UNODC, 2017, p. 81)



“Survivors never remain in contact with offenders following an assault”

“when a [survivor] withdraws her complaint or refrains from participating in the criminal justice system, the violence could not really be so serious”

It is incomprehensible that the applicant, having been raped by this man, tried to contact him herself.



In this presentation

- I. Rape mythology: from the criminal justice to the asylum context
- II. Analysis of the Belgian asylum procedure
- III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium
 1. Freeze & appease (avoidant) responses
 2. Fight & flight (approach) responses
- IV. Conclusion



I. Rape mythology: from the criminal justice to the asylum context

RAPE MYTHS: “prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists” (Burt, 1980) → **RAPE MYTH ACCEPTANCE (RMA)**

	CRIMINAL JUSTICE SYSTEM	REFUGEE LAW SYSTEM
1)	(Limited) evidence → guilty vs. innocent binary	Flight story = only/dominant information source → credible vs. non-credible binary
2)	Past offences	Risk of future persecution upon return
3)	Convicting perpetrators	Protecting (potential) survivors/victims – no defence to investigate
4)	Rape /sexual assault	All forms of SGBV relevant to forced displacement (domestic violence, FGM/C, honour crimes, forced marriage, sex trafficking...)
=	Rape myths that exonerate the perpetrator for past rape	SGBV myths that undermine the credibility of applicants' fear of future persecution or ill-treatment



“[T]he fundamental limitation of a positivist outlook [on RSD] is (...) that it **ignores everything that is not law.**” (Herlihy, Cameron & Turner, 2023)



II. Analysis of the Belgian asylum procedure

UNHCR:

“9. (...) There is no doubt that **rape** and other forms of **gender-related violence**, such as **dowry-related violence**, **[FGM]**, **domestic violence**, and **trafficking**, are acts (...) of **persecution**, whether perpetrated by **State or private actors**.”

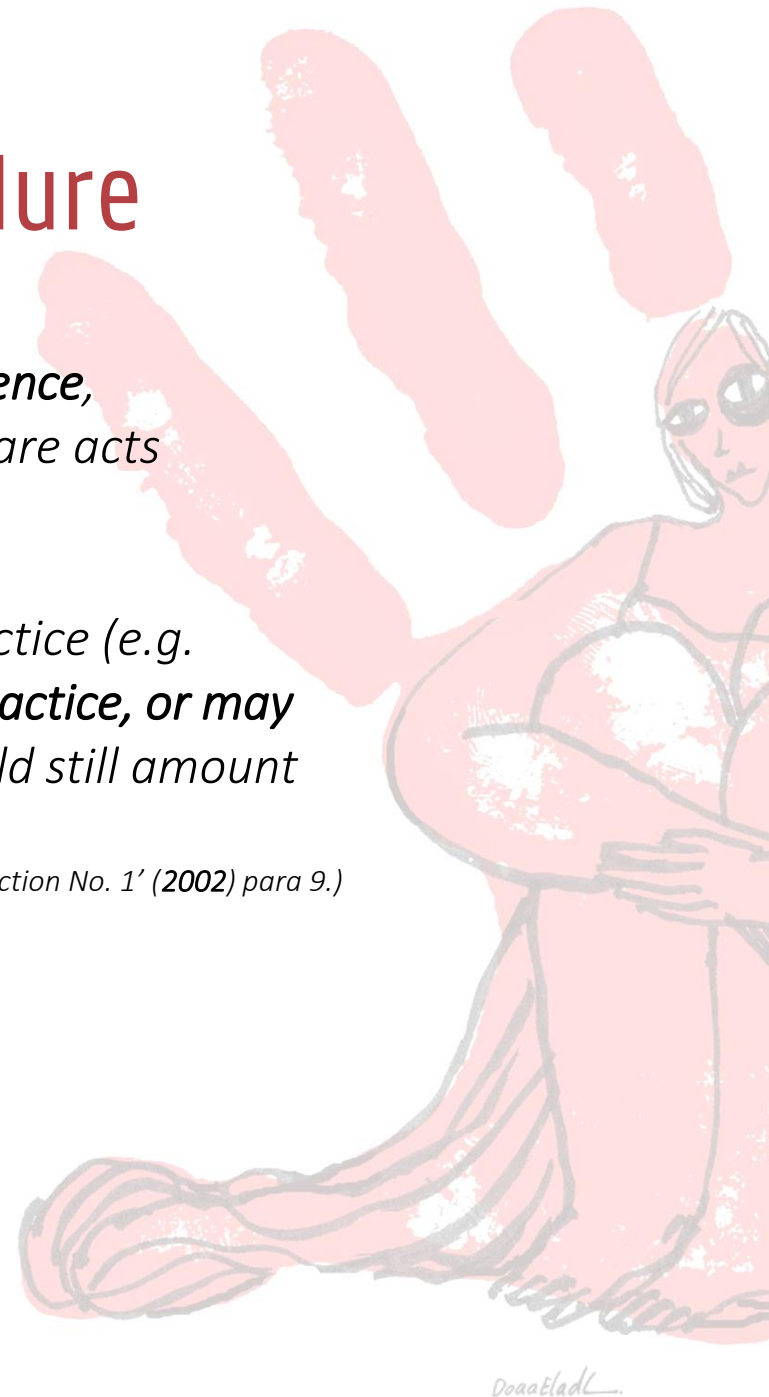
“4. Even though a particular State may have prohibited a persecutory practice (e.g. [FGM]), the State may nevertheless continue to **condone or tolerate the practice**, or may **not be able to stop the practice effectively**. In such cases, the practice would still amount to **persecution**. (...)”

(UNHCR, ‘Guidelines on International Protection No. 1’ (2002) para 9.)

EU & BELGIUM:

“Article 48/3. (...) **[A]cts of persecution** may take the form, inter alia, of:
(a) acts of physical or mental violence, including **sexual violence**;
(f) acts of a **gender-specific** or child-specific **nature**.”

(article 48/3, §2), a) & f) of the Belgian Aliens’ Act, transposed from article 9, §2), a) & f) EU Recast Qualification Directive)



II. Analysis of the Belgian asylum procedure

Istanbul Convention (Council of Europe):

- ⊗ Recognise **SGBV** as a form of **persecution**
- ⊗ Interpret the **Convention grounds** in a **gender-sensitive** way
- ⊗ Develop **gender-sensitive procedures** for **determination** of international protection
- ⊗ Respect the **non-refoulement** principle in SGBV-related asylum applications.



(article 60 & 61 of the Council of Europe **Istanbul Convention** (2011), Belgium = state party)



BELGIUM - Group of Experts (GREVIO) monitoring implementation of Istanbul Convention:

"226. GREVIO encourages the Belgian authorities to ensure that a gender-sensitive approach is applied consistently to all grounds for persecution and that women receive optimal support for disclosing the grounds on which they are applying for international protection."

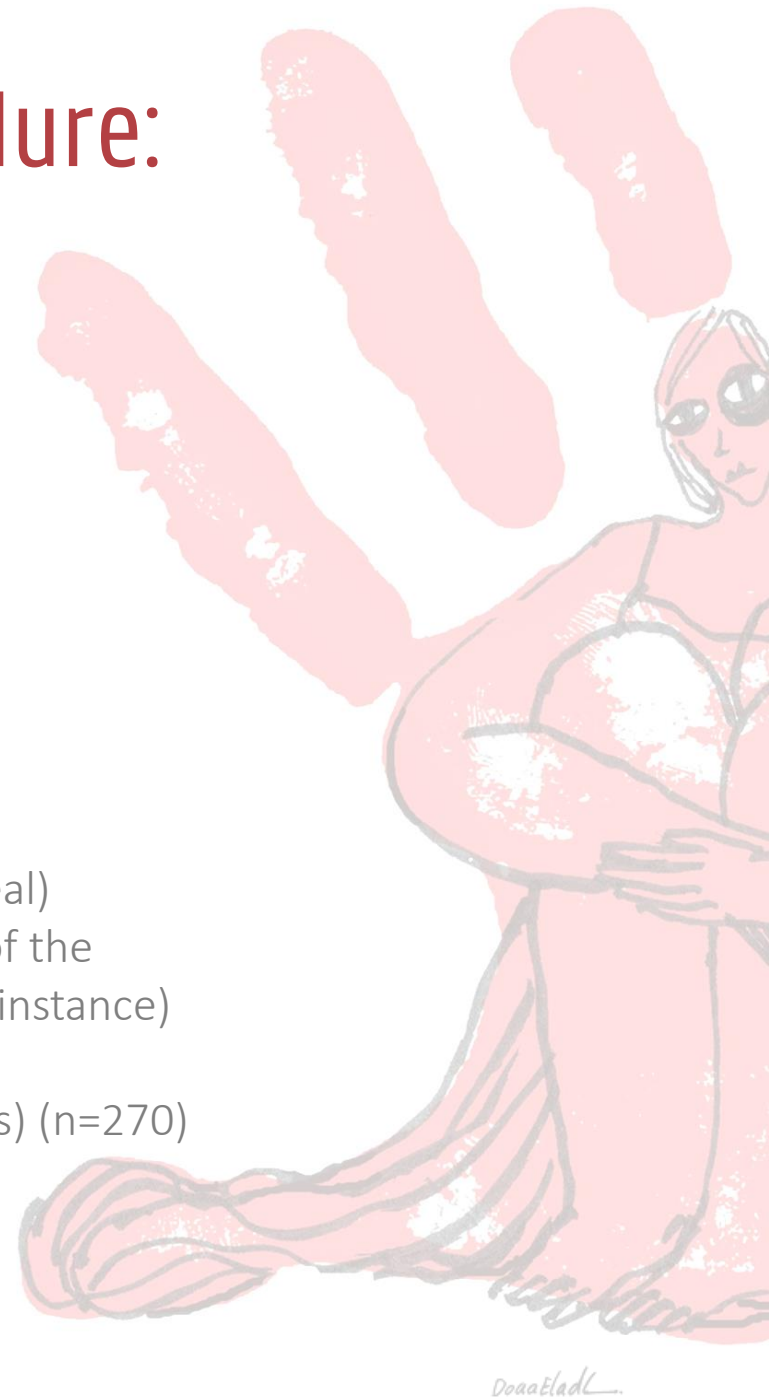
(GREVIO's Evaluation Report on Legislative and Other Measures Giving Effect to the Istanbul Convention: Belgium, 2020)

II. Analysis of the Belgian asylum procedure: methodology

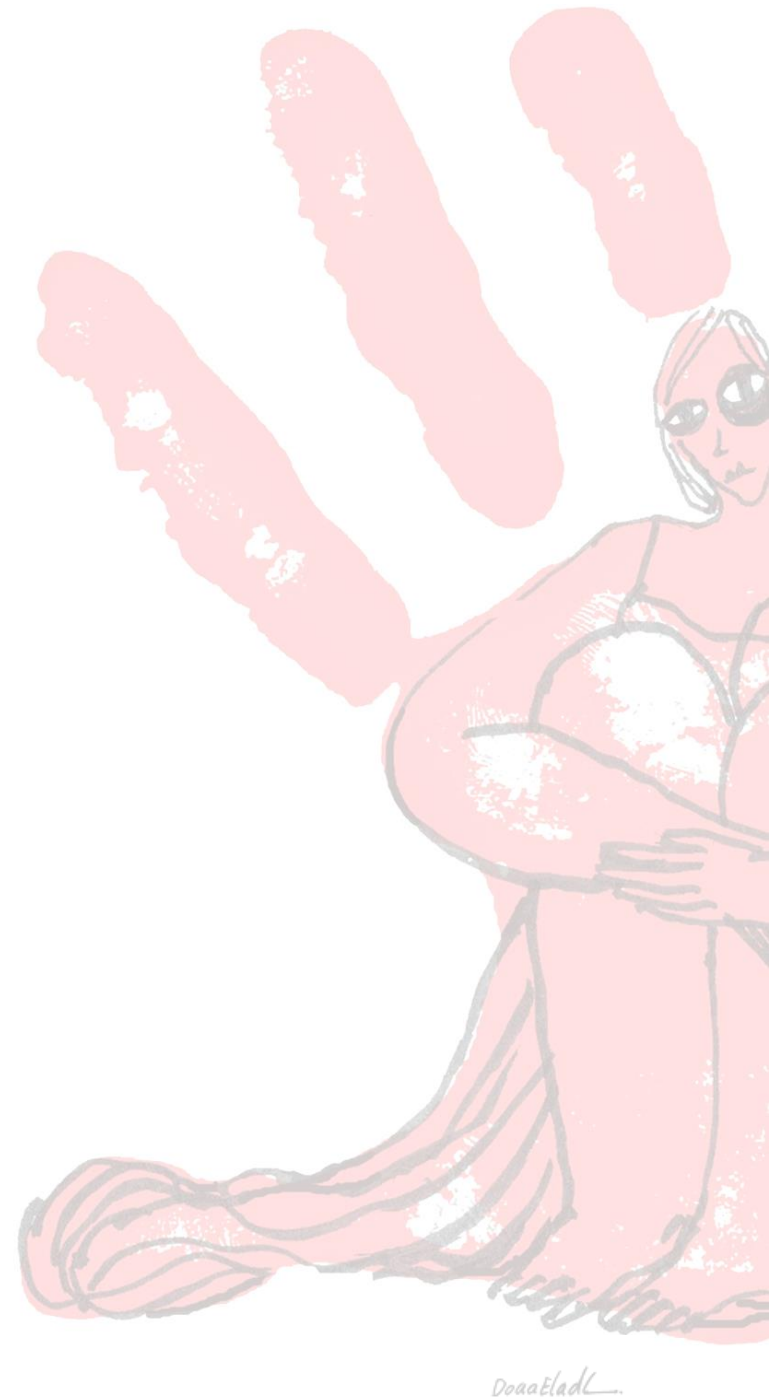
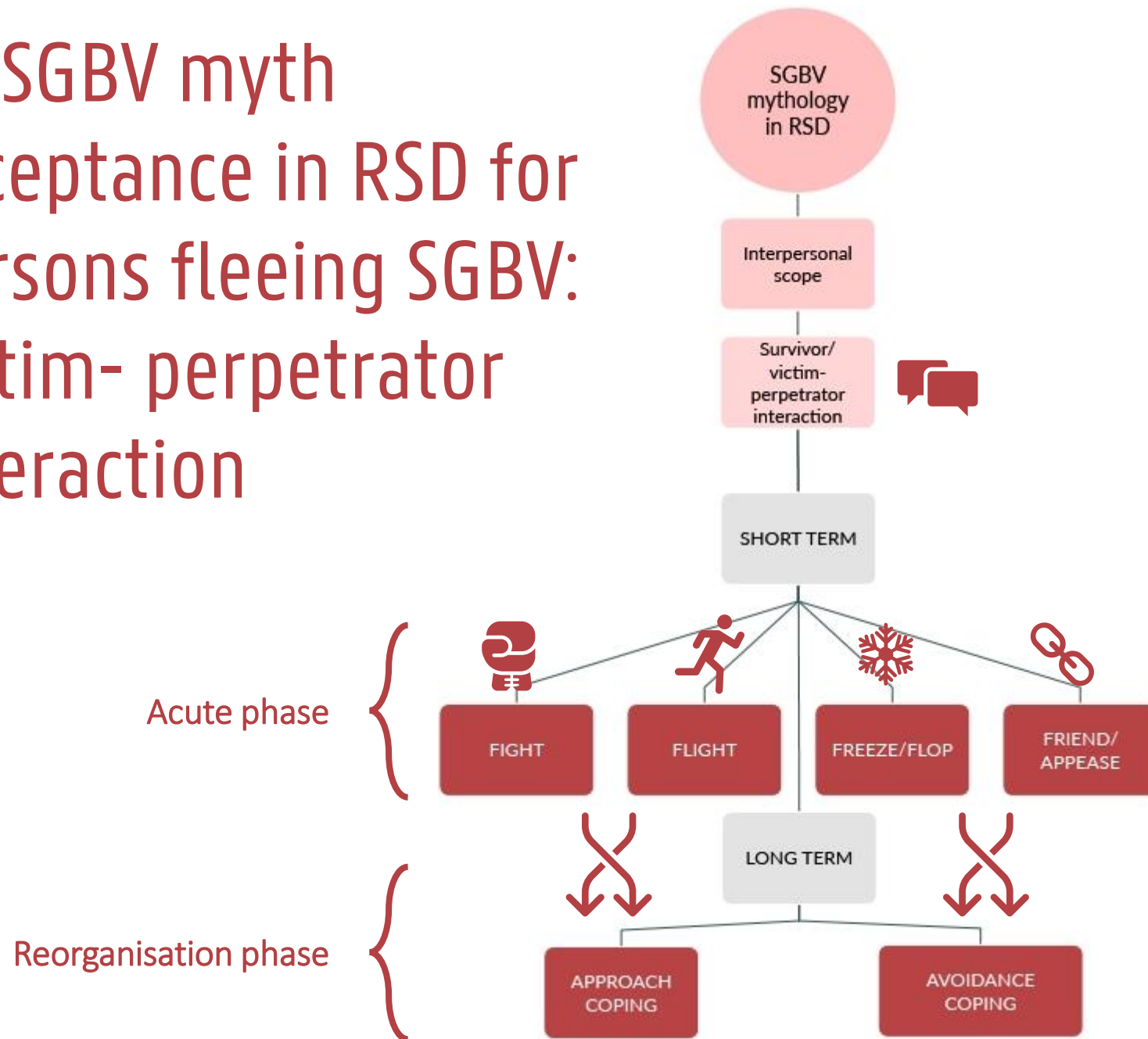
- **Case law analysis** of **49** asylum decisions (22 CALL, 27 CGRS) of **18** applicants
- **Interviews** with applicants (n=18)
 - 7 interviews by researcher with **8** applicants
 - 11 interviews by CGRS with **9** applicants

Ongoing analysis, not included yet:

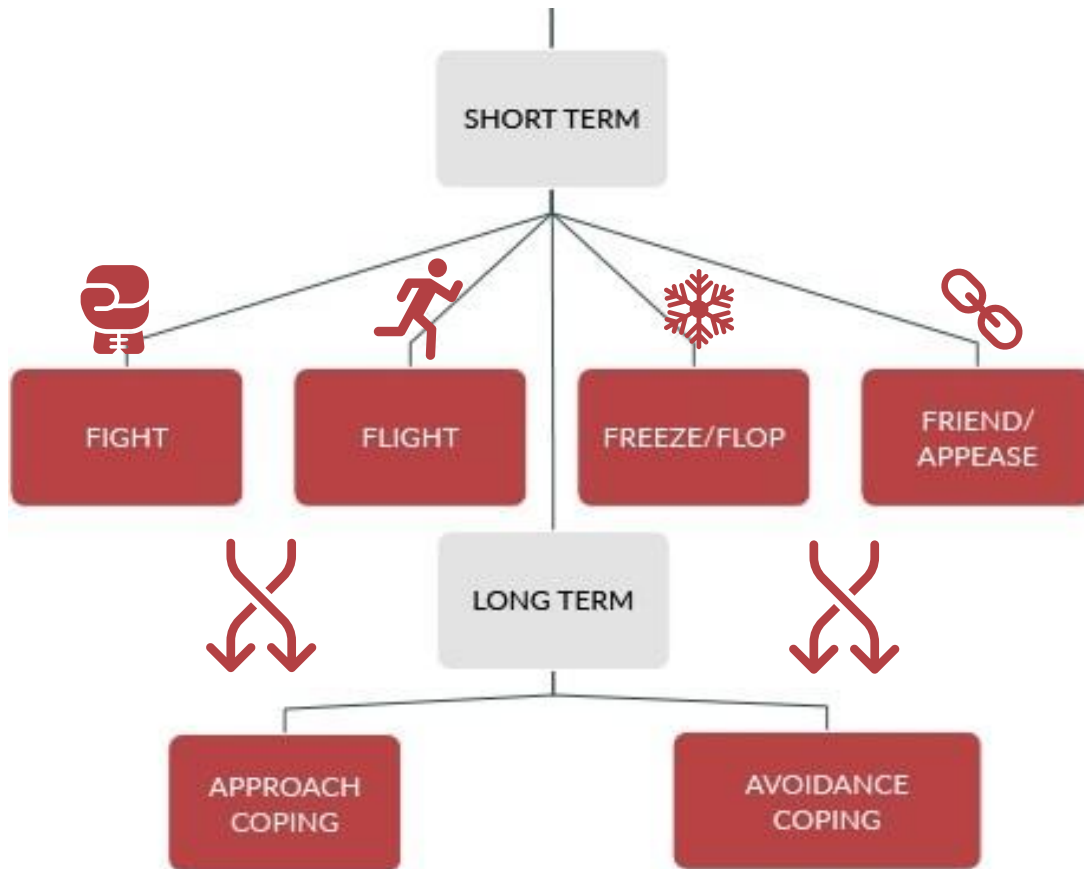
- **Interviews** with decision-makers (n=22)
 - 8 judges & attachés at the Council for Alien Law Litigation (CALL, appeal)
 - 14 protection officers/supervisors/gender coordinators at the Office of the Commissioner General for Refugees and Stateless Persons (CGRS, 1st instance)
- Survey with decision-makers (exploratory in preparation for in-depth interviews) (n=270)
 - 74 judges & attachés at CALL (**89,16%**)
 - 196 protection officers/supervisors/gender coordinators at CGRS (**80,22%**)



III. SGBV myth acceptance in RSD for persons fleeing SGBV: victim- perpetrator interaction



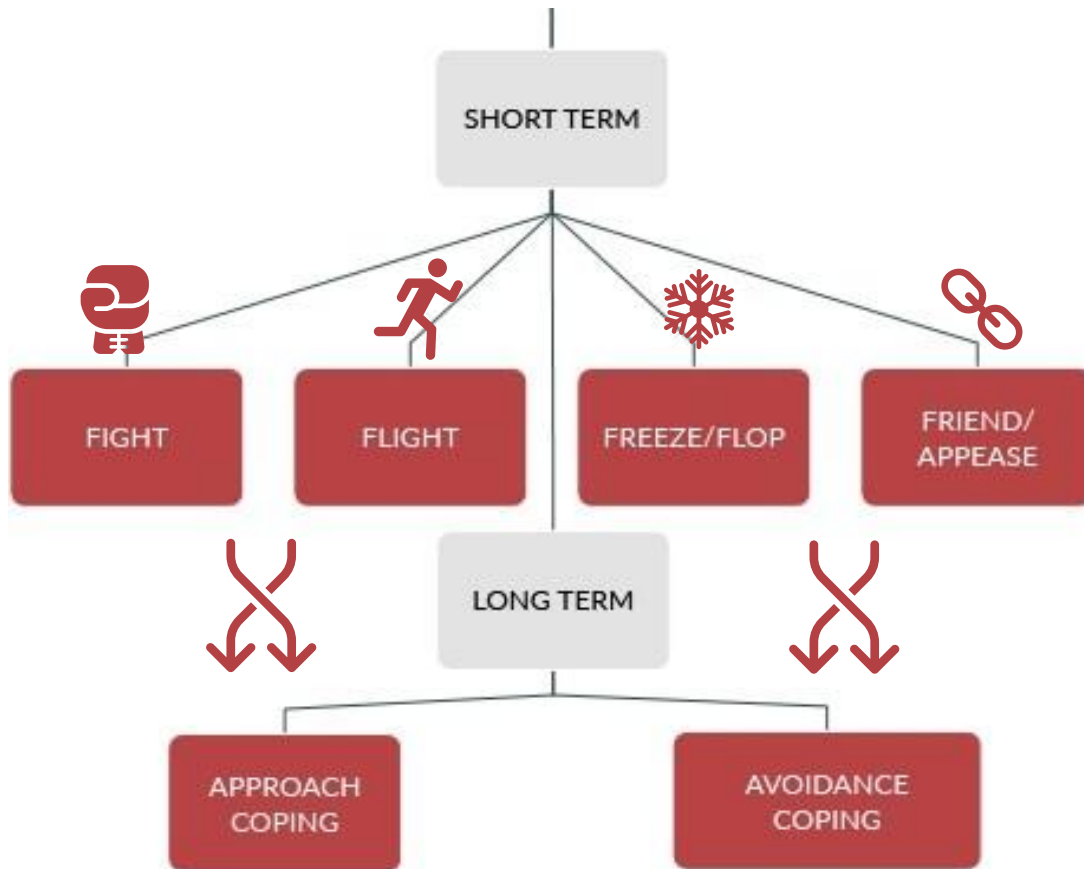
III. SGBV myth acceptance in RSD for persons fleeing SGBV



- **FIGHT**: overt (aggression) or more subtle 'fight behaviours' (saying no)
- **FLIGHT**: create space between survivor/victim and the threat (sprinting, backing away, hiding)
- **FREEZE**: a position of catatonic musculature tension (verbal or physical), possibly whereby muscle tension is lost and both body and mind become malleable (flop)
- **APPEASE**: survivors/victims activate social engagement system with the person causing the fear

(Lodrick, 2007, pp. 5-6)

III. SGBV myth acceptance in RSD for persons fleeing SGBV



APPROACH COPING: sufficient resources to replace or **eliminate the stressor**

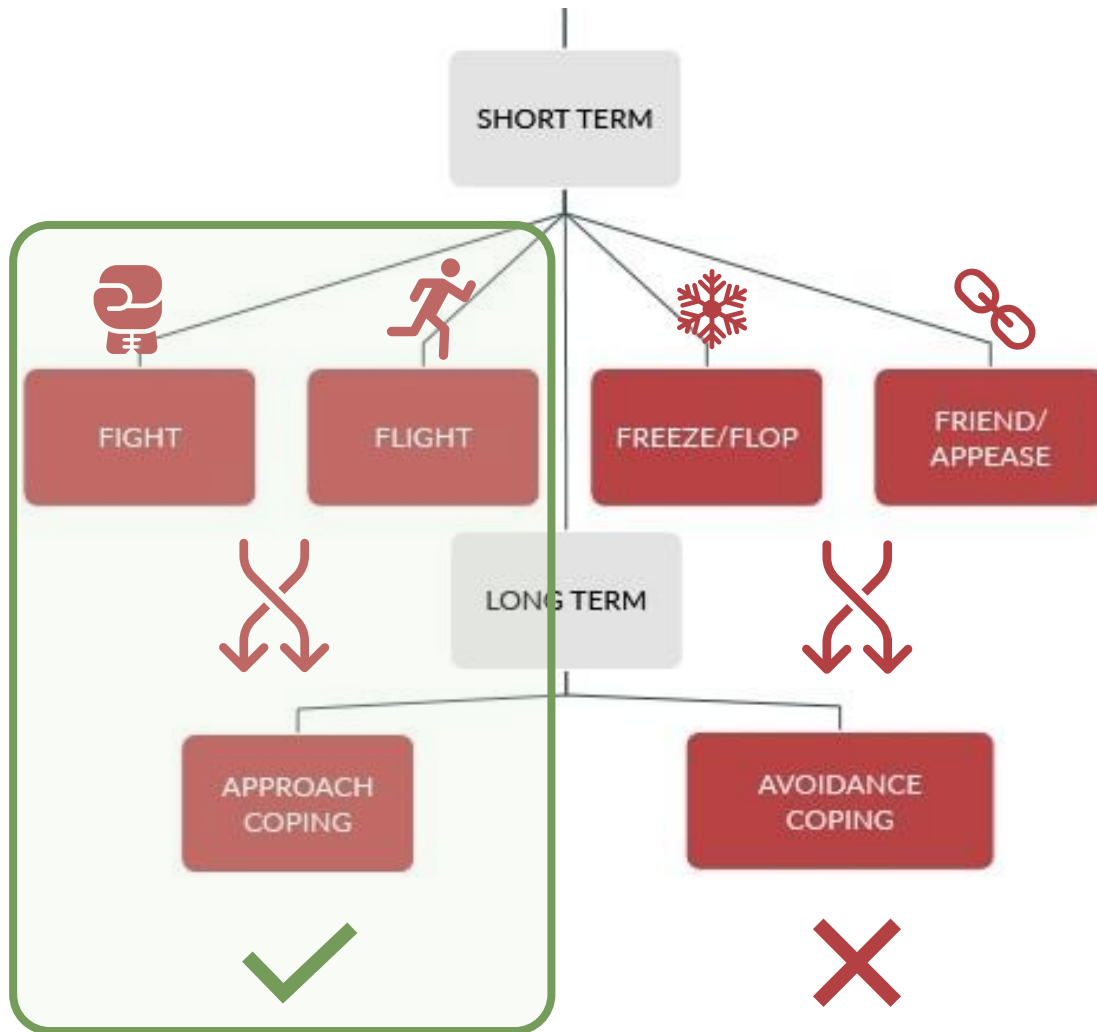
E.g. counselling services, calling the police, seeking help from organizations and other professional services, talking to friends/family, making plans to leave...

AVOIDANCE COPING: (perception of) insufficient resources, **avoid stress** from the stressor

E.g. preventing escalation, ignoring, self-protection, denial, keeping silent, being patient and remaining calm, selective disclosure without any goal to approach stressor...

(Babacan Gümüş et al., 2020, p. 80)

III. SGBV myth acceptance in RSD for persons fleeing SGBV



= Denying or minimizing the crime based on **expectations** about survivor behavior (Breen & Boyce, 2021, p. 5232)

SHORT TERM

- “[survivors will] violently resist, attempt to escape or scream for help” (UNODC, 2017, p. 96)
- “victim[s] [being] friendly to the perpetrator during and after the incident [are seen as non-credible]” (UNODC, 2017, p. 79)

LONG TERM

- “it cannot be that bad or [they] would leave” (UNODC, 2017, p. 98)
- “if it was really serious [they] would come to court to provide evidence” (UNODC, 2017, p. 99)
- “survivors never remain in contact with offenders following an assault” (Breen & Boyce, 2021, p. 5233)
- “society expects (...) certain behaviors following the attack (e.g., report the attack, stop dating the assailant)” (Fanflik et al., 2007, p. 8)

III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

1. Freeze & appease (avoidant) responses

“You spent several years in Honduras afterwards. You add that he kept contacting you afterwards by asking for hugs or telling you to sit on his lap, however, you tried to make sure to always be busy when he came home so that you had to spend as little time with him as possible. (...) [Y]ou do not show that you had any problems in Honduras in the last three years before you left that would lead to serious harm.” (Honduras, NH003_CGRS 1 (refusal), 12/08/2021, no CALL case no.)



FREEZE

III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

1. Freeze & appease (avoidant) responses

"The first noteworthy fact is that after learning that she was pregnant, the applicant on her own initiative went to track down T. and asked about him at work. She asked his colleagues if they knew where he was. She states, "I looked everywhere, I didn't find him." (notes, p. 6). It is incomprehensible that the applicant, having been raped by this man, tried to contact him herself."

(Eritrea, NEr018_CALL 1 (refusal), 25/11/2022, CALL case no. 280 827)

APPEASE

III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

- Distinctive features of SGBV myth acceptance on survivor/victim-perpetrator interaction in Belgian asylum context:

Case law analysis (n=49)	Freeze	Appease	Fight	Flight
Rape & sexual assault	18	1	2	3
Domestic violence	14	1	0	2
Forced marriage	7	0	0	0
FGM	5	0	0	0
Sex trafficking & forced prostitution	3	0	0	0
Violence related gender norm transgression	3	0	0	0
Forced family planning	3	0	1	2

Items coded in 49 asylum decisions (22 CALL, 27 CGRS) with Nvivo

III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

2. Fight & flight (approach) responses

“Women have very little ability to defend themselves or to stand up to the men they face who are out to cause them problems if they are alone. It therefore seems particularly implausible that such a "monster" would be impressed by a woman who calls out a random name and openly threatens to scream in order to draw attention to and humiliate him.” (Syria, NSy019_CGRS 1 (refusal), 8/08/2023, CALL case no. 293 489)



FIGHT

III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

2. Fight & flight (approach) responses

“Interviewer: I'm not entirely sure I understand why you fled. From what I understand, this man threatened those around you in order to put pressure on you. Why did you leave on your own?”

NSy019: I didn't have a solution. And I tried to save my life. He was capable of doing anything to get his way with me. I'm not happy that I left the country alone, I would have preferred to (...) leave with them.” (Syria, NSy019_Interview by CGRS, 26/07/2023, CALL case no. 293 489)



FLIGHT

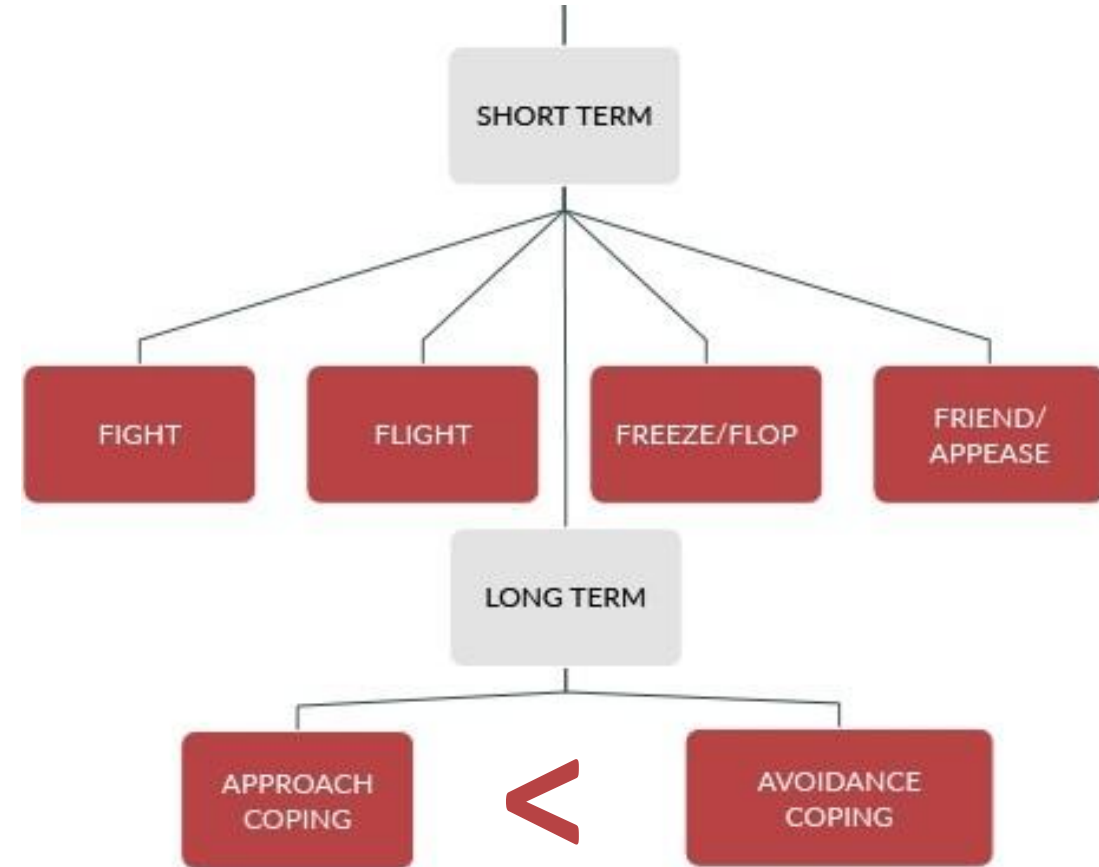
III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

BOTH **approach and avoidance coping methods**

- Used in a cyclical, flexible manner
- Depending on (perceived) resources available

SHORT TERM – perpetrator known to survivor/victim → even when escape is objectively possible, the **likelihood of the amygdala eliciting a fight or flight response is low** (Lodrick, 2007, p. 8)

LONG TERM - existing studies: **avoidance coping > approach coping** by survivors/victims of different forms of GBV (Gümüş et al., 2020; Kandemirci & Kağnıcı, 2014; Özcan & Kırca, 2017; Sen & Bolsoy, 2017) (Zonp et al., 2022, p. 4237)



III. SGBV myth acceptance in RSD for persons fleeing SGBV: a case study on Belgium

“The victim’s **personal characteristics** coupled with multiple **external factors** make it virtually impossible to predict how an individual might react following a sexual assault.” (Fanflik et al., 2007)



- **External/macro level influences:** e.g. social support network, (nature and continuation of) relationship to the assailant, severity/frequency/type of abuse, resources available to survivor/victim, responsiveness of potential help sources, societal or cultural reactions to SGBV victimisation...
- **Personal/micro level influences:** e.g. level of mental health functioning or perception of self prior to the assault, commitment to preservation of relationship, past life experiences, developmental level, spiritual beliefs, genetic predisposition, internalization of the sexual assault including how the victim interprets the experience...

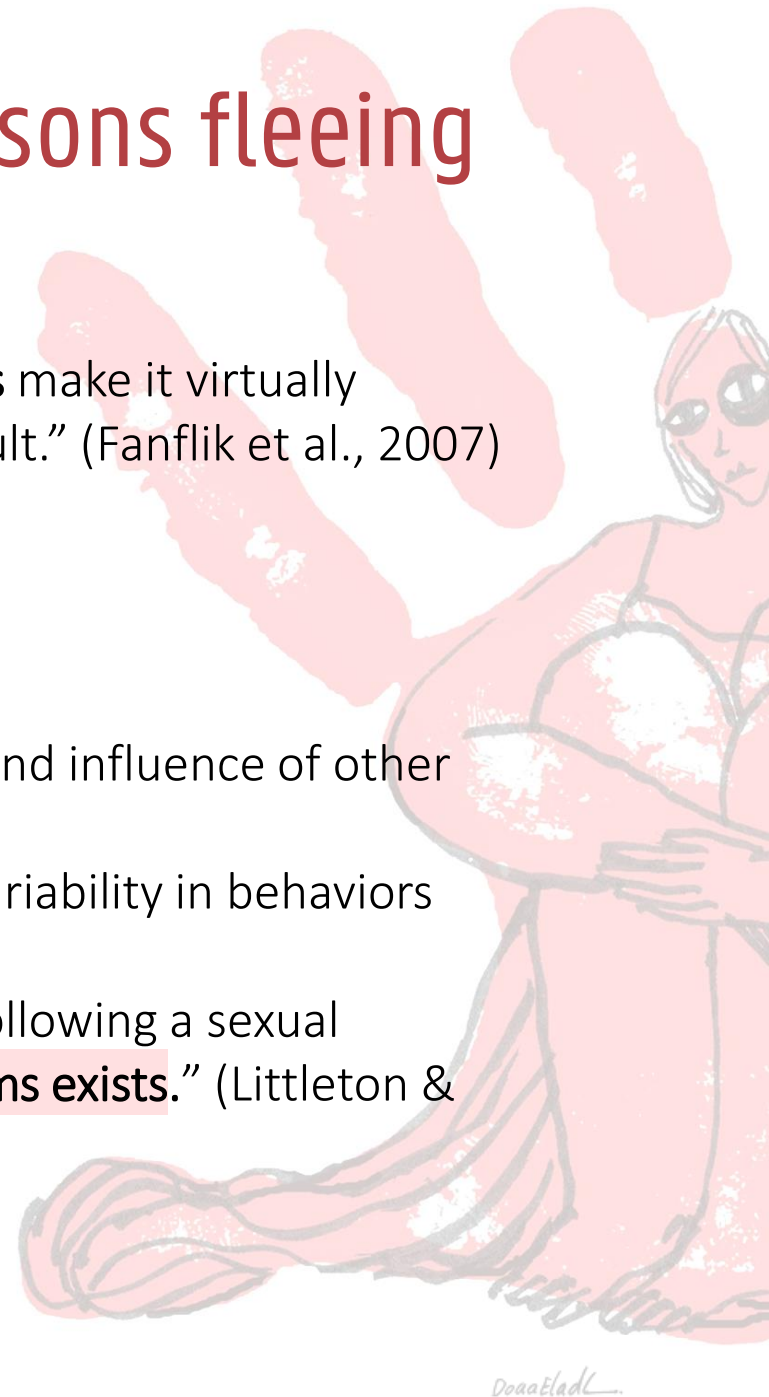
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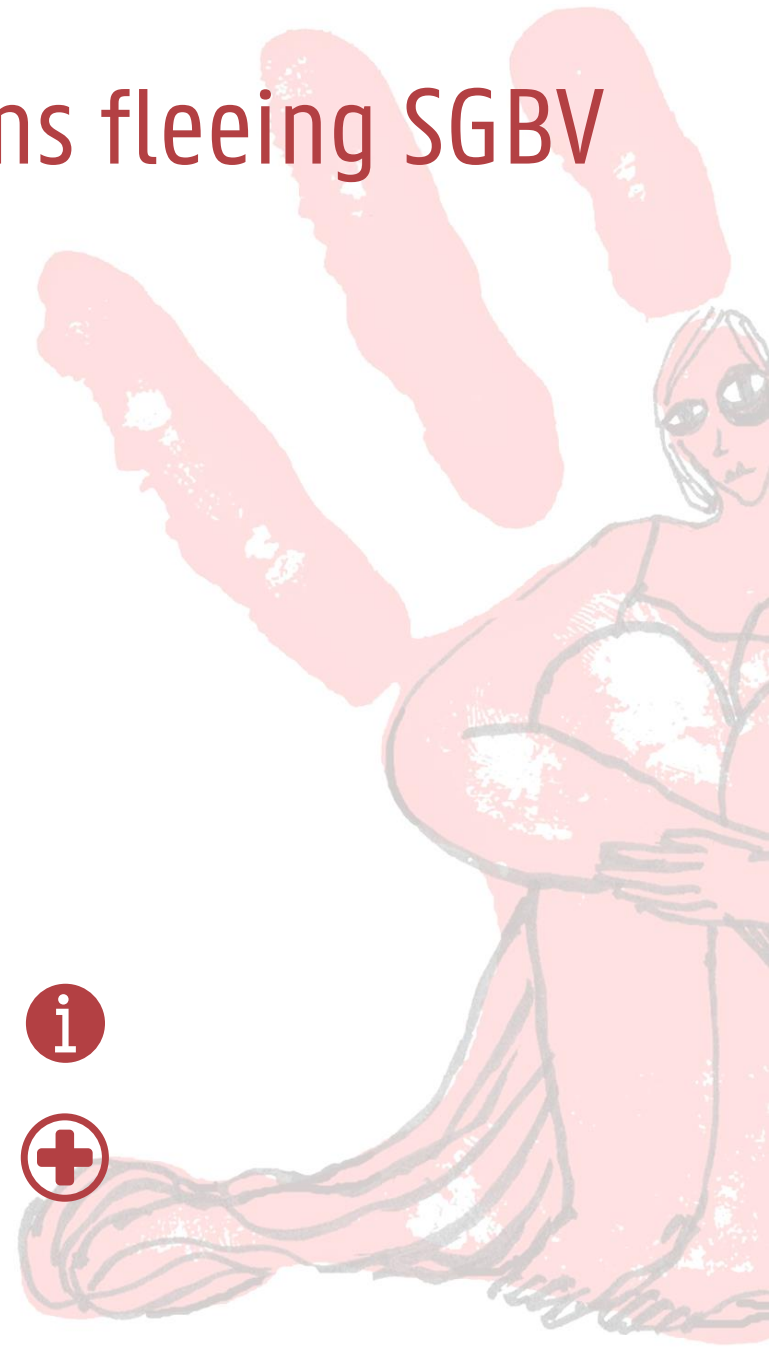
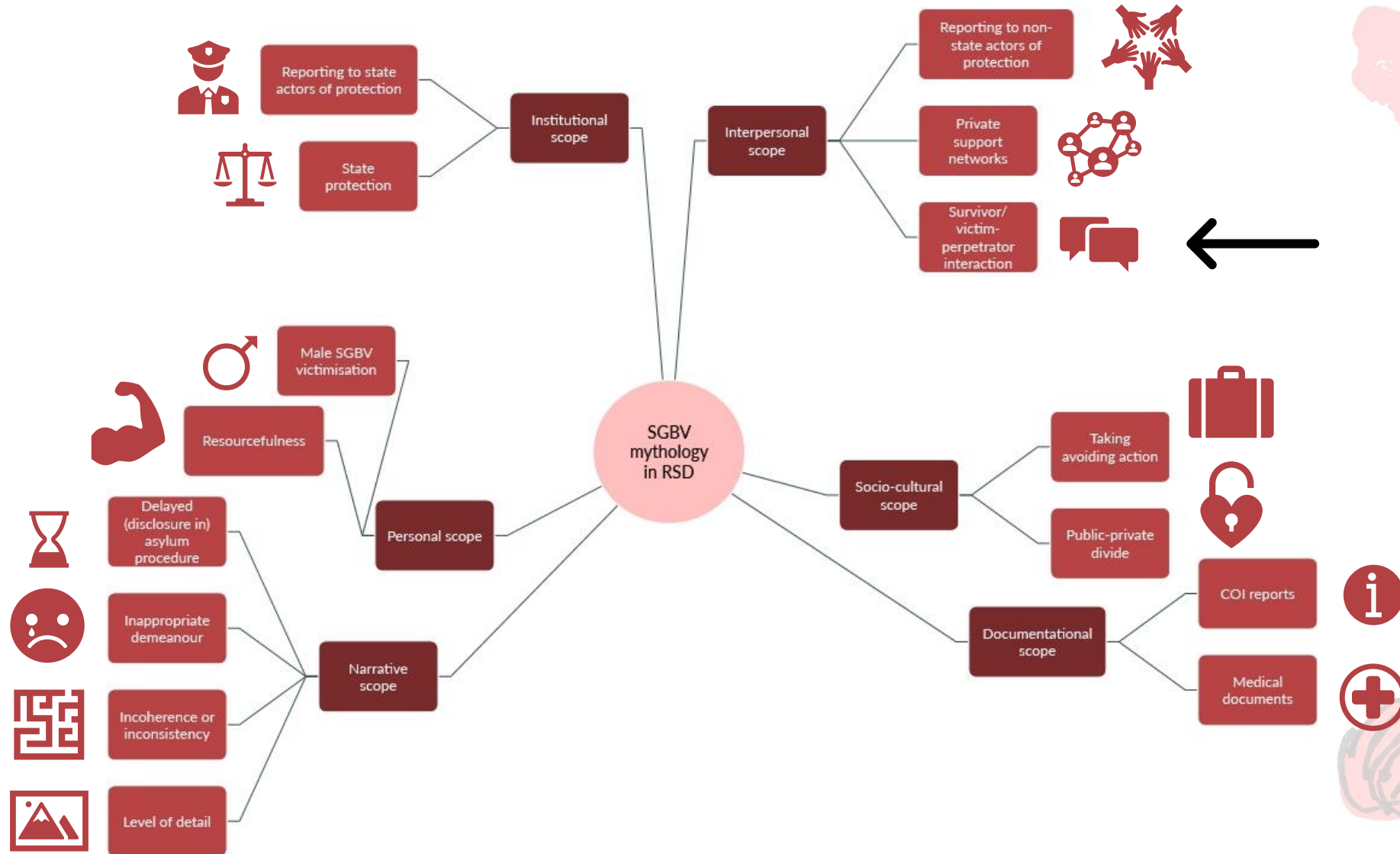


- Variable in **frequency, duration and nature**, according to feedback and influence of other contextual variables (especially for **long-term SGBV**)
- Reactions and coping strategies often **scrutinized** because of the variability in behaviors

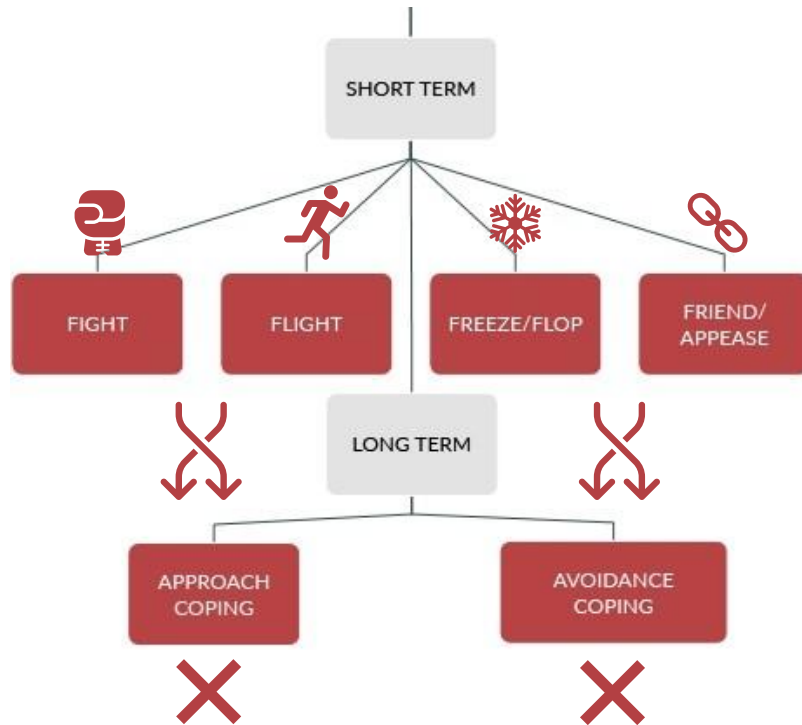
→ “Given the number of potential influences on a victim’s response following a sexual assault, **no comprehensive model of coping among sexual assault victims exists.**” (Littleton & Radecki Breitkopf, 2006)



III. SGBV myth acceptance in RSD for persons fleeing SGBV



IV. Conclusion



Article 1(A)2 of the UN Convention and Protocol Relating to the Status of Refugees (1951)



Article 48/3, §2), a) & f) of the Belgian Aliens' Act, transposed from article 9, §2), a) & f) EU Recast Qualification Directive



Article 60 & 61 of the Council of Europe Istanbul Convention (2011)

→ 'Gender-sensitive assessment' in SGBV-related cases (Istanbul Convention)
= ?
≠ SGBV myths used as arguments for non-credibility

→ Incorrect application of **refugee definition**
=> risk of **gender-based persecution upon return**

Questions?

FYI:

- Article on SGBV myths in non-refoulement case law of ECtHR:

IJRL: <https://doi.org/10.1093/ijrl/eead029>

- Blog post on delayed disclosure and reporting myths in gender-related asylum procedures (focus on Belgium)

RLI Blog: <https://rli.blogs.sas.ac.uk/2023/05/11/how-protecting-your-daughter-can-lead-you-to-being-denied-international-protection-in-belgium/>

- Blog post on resourcefulness myths in gender-related asylum procedures (focus on Belgium)

Völkerrechtsblog: <https://voelkerrechtsblog.org/how-joining-a-majorette-group-can-lead-you-to-being-denied-international-protection/>

- Guidelines for Lawyers on gender-related asylum procedures

With Liselot Casteleyn (Migration Law Research Group, Ghent University): [Dutch/French](#)



Thank you!

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MigrLaw Research group - <https://www.ugent.be/re/epir/en/researchgroups/public-law/departement/migration-law/lroelsen.htm>

Gender & Violence team @ICRH - <https://www.icrhhb.org/en/staff/lore>

CESSMIR - <https://www.ugent.be/cessmir/nl/leden/doctoraatsonderzoekers/lore-roels>

Human Rights Centre - <https://hrc.ugent.be/staff/lore-roels/>

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