

EN-GENDERING THE EUROPEAN ASYLUM SUPPORT OFFICE

Amnesty International's END FGM European Campaign, the European Women's Lobby and ILGA-Europe recommend the integration of a gender perspective into the work of the European Asylum Support Office

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EUROPEAN WOMEN'S
LOBBY
EUROPEEN DES FEMMES



With the establishment of the European Asylum Support Office (EASO), the European Union (EU) and its Member States have an opportunity to act upon their commitments to gender equality, women's rights and lesbian, gay, bisexual and trans (LGBT) persons' rights. By integrating a gender perspective into the EASO's structure and work plan, the EU Member States would be able to respect and fulfil their international and European obligations to protect people fleeing and at risk of persecution.¹

¹ See in particular:

- a) UN Convention Relating to the Status of Refugees, 1951 and its attached guidelines (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, 1979; The Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UNHCR, 2002; Guidance Note on refugee claims relating to female genital mutilation, UNHCR, 2009; Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, UNHCR, 2008 to be interpreted in light of recent case-law developments such as *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c3456752.html>); UN Committee against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Austria, CAT/C/AUT/CO/3, 15 December 2005 (in particular §9)
- b) UN Human Rights Committee, Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Austria, CCPR/C/AUT/CO/4, 30 October 2007 (in particular 18)
- c) UN Human Rights Committee, Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights in respect of Communication No. 1465/2006, CCPR/C/98/D/1465/2006, 25 March 2010 (in particular article §5.5 "*The IRB did not consider the allegations of risk from the correct standpoint, since it failed to evaluate the author's application for refugee status on the basis of her social group, i.e., a single woman and victim of domestic violence who is opposing*

Reflecting the situation of people on the ground and paying a particular attention to specific issues, such as gender-based persecutions and persecutions related to sexual orientation and gender identity should be seen as a prerequisite for ensuring a proper implementation of the EU asylum *acquis*. By incorporating the recommendations detailed hereafter, the EU and its Member States would not only ensure greater efficiency in the functioning of the EASO but they would fulfil their commitments to the international human rights standards as well as to the EU Treaties obligations to which they have signed up to.

Gender equality is one of the common values on which the EU is founded. The obligation to promote equality between men and women is explicitly stated in Articles 2 and 3 of the Treaty on European Union² and enshrined in the Charter of Fundamental Rights³. In addition, Article 8 of the Treaty on the functioning of the European Union (TFEU)⁴ provides that in all its

her daughter's excision and thereby challenging Guinean social customs.")

d) European Court of Human Rights, *N v. Sweden*, No. 23505/09, July 2010. In this case the European Court rules that the repatriation of a woman to her country of origin, where she is at risk of gender-based persecutions would be a violation of article 3 of the European Convention on Human Rights "§62 (...) *The court finds that there are substantial grounds for believing that if deported to Afghanistan, the applicant faces various cumulative risks of reprisals which fall under Article 3 of the Convention (...)* Accordingly, the Court finds that the implementation of the deportation order against the applicant would give rise to a violation of Article 3 of the Convention".

e) Council of Europe, Parliamentary Assembly, Resolution Gender-related claims for asylum, Resolution 1765 (2010), 8 October 2010.

² Consolidated version of the Treaty on European Union, 2010/C 83.

³ Charter of Fundamental Rights of the European Union, 2010/C 83/02, see in particular Art 18, Art 21, Art 23, and Art 24.

⁴ Consolidated version of the Treaty on the Functioning of the European Union, 2010/C 83.

activities the Union shall aim to promote equality between men and women, in particular through gender mainstreaming. Similarly, Article 10 (TFEU) provides that the EU shall aim to combat discrimination based *inter alia* on sex and sexual orientation in defining and implementing its policies and activities, while Article 19 (TFEU) provides that the EU should take appropriate action and adopt relevant legislation to combat such discrimination. In its Women's Charter,⁵ the European Commission (EC) reiterated its commitments to an effective realisation of gender equality. Notably, it committed to engage in “*strengthening the gender perspective in all [its] policies (...) and bringing forward specific measures to promote gender equality. [It also pledged] to dedicate the necessary resources to realize [this]*”. **These obligations and commitments apply to EU asylum policies and structures.**



Refugees crowded into a UNHCR truck try to rest on the long and bumpy road from villages along the Liberia-Ivory Coast border, February 2011. ©UNHCR/G. Gordon

In an informal ministerial conference on Quality and Efficiency in the Asylum Process held under the Belgian Presidency in 2010, Member States stressed the need for an overall gender-sensitive asylum system to be reflected in EU asylum legislation.⁶ The EC has also endorsed this position in its Communication on a policy plan on asylum in June 2008 that states as an overarching objective the need “to incorporate gender considerations” in the future Common European Asylum System (CEAS). Moreover, its recent Strategy for equality between women and men 2010-2015

⁵ Communication from the European Commission, A Strengthened Commitment to Equality between Women and Men, A Women's Charter, Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women, COM (2010)78 final, 5 March 2010.

⁶ Belgian Presidency of the EU: <http://www.eutrio.be/quality-and-efficiency-asylum-process>

recalls that “*gender related issues are also of particular importance in the area of asylum*”. In the EU, it is estimated that around 35 per cent of all asylum applicants were women or girls during the year 2010.⁷ If women may seek asylum for the same forms of persecution as men, they may also be victims of persecution for reasons that are specific to their gender. Similarly, if the reason for persecution is the same as for a man, it may manifest itself differently when the target is a woman. Gay, lesbian, bisexual or trans people may also be subjected to gender-based persecution or risk of persecution.⁸ In the Council of Europe context, all EU Member States agreed on measures to combat discrimination on grounds of sexual orientation or gender identity, recognising that “*a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status*”, and that “*asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity*”.⁹ Each person should be treated with regard to their particular experiences and to specific persecutions they may face due to their gender.

In accordance with the evolving interpretation of the 1951 Refugee Geneva Convention, the **EU recognises that acts of a gender specific or child specific nature can constitute persecution**.¹⁰ However, if gender-related persecutions¹¹ and gender-based violence¹² can give rise to international protection claims, EU protection remains limited as the directive states that “*gender related aspects might be considered, without by themselves alone creating a presumption for the applicability*”.¹³ In this respect, the Commission's

⁷ A Eurostat estimate for the January-October 2010 period: <http://epp.eurostat.ec.europa.eu>

⁸ Council of Europe, Parliamentary Assembly, Gender-related claims for asylum, Resolution 1765 (2010), 8 October 2010; Council of Europe, Parliamentary Assembly, Report on Gender-related claims for asylum, Doc 12350, 26 July 2010.

⁹ Council of Europe, Committee of Ministers, Measures to combat discrimination on grounds of sexual orientation or gender identity, Recommendation CM/Rec (2010), 31 March 2010.

¹⁰ Council Directive (2004/83/EC) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 29 April 2004. See Articles 2, 9§2 and 20.

¹¹ When victims are persecuted because of their sex or because they fail or refuse to comply with social, cultural or religious requirements expected from their biological sex.

¹² For example female genital mutilation, forced marriage, rape, sexual exploitation, forced sterilization, forced abortion.

¹³ Council Directive (2004/83/EC) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 29 April 2004. See Article 10.

proposals for the recast directives¹⁴ to include measures “on providing more concrete guidance on the weight to be attached to gender-related aspects” are welcomed. Nevertheless, despite these references, many hurdles are to be overcome to ensure that the gendered nature of persecution is fully understood by EU and Member State asylum authorities. In addition, gender-specific experience should be duly considered and given equal and fair assessment in the application for international protection.

In this regard, the role of the new EASO is going to be of paramount importance. The general **function of the EASO is to develop cooperation among Member States in the field of asylum in view of the implementation of the CEAS**. Primarily, this agency has to provide specific expertise to the EU Member States, to collect Country of Origin Information, to develop training and to exchange good practices. As a result, the EASO could support the implementation of asylum procedures that are gender sensitive to ensure that persons with particular needs, especially women, as well as lesbian, gay, bisexual and trans persons, equally benefit from a non-discriminatory process. This requires a formal and explicit integration of the gender perspective both in the organisation and in the work plan of the EASO.

To undertake a proper integration of the gender perspective into its work, we strongly advise the EASO to implement the following recommendations. The recommendations are illustrated by a non-exhaustive list of examples from EU Member States and non-governmental organisations.



A woman asylum seeker from Ukraine looks out through the bars of the Detention Center in Medvedov, Slovak Republic, 16 November 2006. ©UNHCR / B. Szandelszky.

¹⁴ European Commission, Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 21 October 2009, 2009/0164 (COD). European Commission, Proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in member States for granting and withdrawing international protection, 21 October 2009, 2009/0165 (COD).

AT THE STRUCTURAL LEVEL, WE URGE THE EASO TO:

1. Develop gender expertise in the structure of the EASO.

The organisational structure should develop gender focal points responsible for coordinating gender mainstreaming in all the activities of the EASO, in particular through the units in charge of Country of Origin Information and training. These persons should have long-standing experience in the issues of gender and asylum. Parallel to this, the responsibility of all staff to develop knowledge on gender issues in relation to the asylum process should be ensured and training should be provided. Forums for discussions of dilemmas on refugee status determination and reception conditions including in relation to gender issues should also be developed.

BELGIUM¹⁵

In 2005 the Office of the Commissioner General for Refugees and Stateless persons (CGRS) appointed a coordinator for gender issues. The coordinator is competent for issues relating to women's rights, sexual orientation and gender identity.

The coordinator's task is to define guidelines for the processing of gender-related asylum applications, taking into account the specificity and the vulnerability of certain asylum seekers and to supervise their application. The CGRS has also appointed reference persons for gender issues in each geographic section of the CGRS. Each reference person must detect within his/her section the training and information needs with respect to gender issues.

2. Designate people with a gender expertise in the Asylum Intervention Pool and in the Executive Committee if established. A gender working group should be created in the working parties.¹⁶ It should be competent to address issues related to women rights, sexual orientation and gender identity.

3. Develop a formal liaison with other EU agencies such as the European Institute for Gender Equality (EIGE). The regulation on establishing the EASO foresees such cooperation with other EU

¹⁵ Office of the Commissioner General for Refugees and Stateless Persons, http://www.cgvs.be/en/Groupes_vulnerables/Femmes_et_problematique_du_genre/index.jsp

¹⁶ See Article 15, Article 29§2 and Article 32 of the Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

bodies (e.g. Fundamental Rights Agency, Article 52). The EASO could consider working with the EIGE on issues related to data collection.

4. **Adopt a gender budgeting approach.** This approach would guarantee resources that would sustain the positions for gender focal points. This would also ensure funds dedicated to regular gender training of asylum officers.
5. **Put in place a regular evaluation system of EASO gender mainstreaming work.**
6. **Ensure a broad representation of organisations participating in the consultative forum, including organisations with a gender, sexual orientation and asylum expertise.** The consultative forum should be ensured **representation to the Management Board** and granted **access to all working parties and Executive Committee** meetings. Inputs of the consultative forum should be considered in the drafting of Country of Origin Information and other documents. The forum should also be consulted and involved in the substantive development and implementation of training programmes.

REGARDING THE CONTENT OF ITS WORK, WE CALL ON THE EASO TO:

7. **Develop explicit gender mainstreaming strategies in all activities and operations.** This should be applied to both EASO internal activities and those in relation to EU Member States.
8. **Initiate comparative research** on the disparities between Member States in granting protection on the basis of gender-based persecutions, persecutions relating to sexual orientation and gender identity, and on the forms this protection takes. This research should be the basis for the development of a framework of analysis of asylum cases (for instance through a checklist exercise), ensuring that a gender perspective is used in relation to all criteria of the refugee definition, but also in the interpretation of subsidiary protection.

FLEEING HOMOPHOBIA

Fleeing homophobia is a project funded by the European Refugee Fund (ERF) in 2010 and 2011, and coordinated by the VU University of Amsterdam. It

aims at identifying existing practices as regards the implementation of EU asylum law in cases of lesbian, gay, bisexual and trans asylum seekers in all EU countries. *Fleeing homophobia* particularly focuses on the practices in the field of qualification for international protection, and on asylum procedures. As an outcome, the project will deliver an overview of best practices and policy recommendations to fully bring European practice in line with international human rights norms.

9. **Include a gender-based assessment in the annual report on the asylum situation in the EU.**
10. **Include information on the situation of women and LGBT persons and State's responses to the violation of their rights in the Country of Origin Information, both legally and de facto.** The Country of Origin Information should include situations of threat or persecutions by non state actors, such as female genital mutilation.

UNITED KINGDOM¹⁷

Asylum Aid has drawn up practical guidance on undertaking research on women's gender related claims, from its experience of working directly with women asylum seekers, its legal representatives and supporters. The guide "Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims" is aimed at a mixed audience of legal representatives, Country of Origin Information researchers, information professionals and volunteers supporting women asylum seekers.

11. **Revise EU training modules** in order to incorporate a gender perspective, for example in the European Asylum Curriculum (EAC) to include an analysis of the women's rights in international law in the section relating to human rights instruments. This could be achieved by building on and reinforcing the contents of the modules already being developed in the frame of the EAC (for example Asylum Procedure Directive, International Refugee Law & Human Rights, Country of Origin Information, Interview Techniques + Interviewing Vulnerable Persons). **A regular and automatic evaluation of the needs for**

¹⁷ Asylum Aid Report 2007: http://www.ecoi.net/file_upload/432_1206971434_country-of-origin-information-and-women.pdf

gender, sexual orientation and gender identity training of asylum authorities should be put in place. For example, asylum officers should be trained to identify situations of women fleeing from risk of female genital mutilation.

CYPRUS

In December 2010 the Mediterranean Institute of Gender Studies (MIGS), in cooperation with the UNHCR Cyprus and the Belgian association INTACT held a professional development training workshop entitled: “Women and Refugee Status Determination: Developing Quality Asylum Procedures”. The workshop aimed to examine and improve asylum procedures and the quality and efficiency of asylum decision making in relation to gender specific claims for international protection. The workshop placed special focus on female genital mutilation as a form of gender persecution. Professionals involved in asylum decision making (asylum officers, social welfare officers, lawyers, police officers, reviewing authority for refugee officers, NGO officers) were given the opportunity to discuss current challenges in the area of women and refugee status determination, as well as to share best practices and lessons learned.

BELGIUM

Since 2009, Belgian asylum officers receive specific training on female genital mutilation, sexual orientation and gender identity.¹⁸

SWEDEN

The Swedish Migration Board (Migrationsverket) has launched a project called *Beyond Borders* on “gender, sexuality and power in the asylum process”. This process aims at proposing relevant training guidelines to interviewers and other relevant staff of the Board. It intends to impact all sectors of this national authority, and also includes a focus on Country of Origin Information and how to handle cases where there is a lack of available information (e.g. cases of persecution of lesbian women).

¹⁸ Annual Report 2009 of the Commissioner General for Refugees and Stateless Persons: http://www.cgra.be/fr/binaries/CGRA_RapportAnnuel_2009_FR_tc_m126-103097.pdf



Bosnian Croats flee across the Sava River at Davor, after the fall of Krajina.
© UNHCR/R. Le Moynes

12. **Strongly encourage Member States to ensure that UNHCR guidelines on gender-based persecution, guidance notes on female genital mutilation and on refugee claims relating to sexual orientation and gender identity¹⁹ are properly disseminated amongst asylum officers.** They should be integrated into training modules for asylum officers and taken into account in the processing of claims for international protection.

UNITED KINGDOM

The Refugee Women’s Legal Group, an organisation cooperating with immigration practitioners and academics, proposed Gender Guidelines for Determination of Asylum Claims in the UK in 1998. In 2000, the Immigration Appellate Authority (IAA) published its own gender guidelines. These guidelines were intended to be applied in asylum and immigration appeals and assist asylum adjudicators in their assessment of claims. However, in September 2006, the Asylum and Immigration Tribunal (AIT) declared that the gender guidelines published by the former IAA were not the policy of the AIT. When the AIT was abolished and asylum appeals were brought within the First and Upper Tier Tribunal (Immigration and Asylum Chamber) in February 2010, the *Practice Direction on Child, vulnerable adult and sensitive witnesses* was extended to asylum appeals. Since October 2010,

¹⁹ The UN Convention Relating to the Status of Refugees (1951) and the UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity should be interpreted in light of recent case-law developments such as HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department ([2010] UKSC 31, United Kingdom, Supreme Court, 7 July 2010) which makes clear that it cannot be considered reasonable to force LGB people to go back to their country of origin under the expectation that they could be “discrete” and conceal their sexual orientation.

applicants who have undergone traumatic experiences may be recognized as vulnerable adults.²⁰

SWEDEN²¹

The Swedish Migration Board (Migrationsverket) issued guidelines on gender-based persecution upon instructions of the Swedish government in March 2001.²² In January 2002, the Migration Board issued guidelines specific to cases in which sexual orientation is given as a ground for asylum.²³

FRANCE-ITALY-SPAIN²⁴

Asylum organizations from France, Italy and Spain took part in the “Exchange for change” project which developed a Guide for the improvement of the recognition of gender-based persecution in the asylum determination process in Europe (*Guide pour l'amélioration de la prise en compte des persécutions liées au genre dans la demande d'asile en Europe*). The guide covers international protection and gender-based violence, the consideration of gender within the asylum determination system and the procedures and support for persons fleeing gender-based persecutions.

13. **Develop objective criteria defining and promoting good practices** at national level. Good practices should promote a human rights-centred and gender sensitive approach to asylum. Criteria for good practices should refer to the rights enshrined in the EU Charter of fundamental rights, in the UNHCR Guidelines on gender-based persecution and the UNHCR guidance notes on female genital mutilation and on sexual orientation and gender identity.

The foundational period of the EASO is an opportune moment to instill the value of gender equality in its work. Despite resource limitations, gender mainstreaming needs to be initiated at the outset.

²⁰ See: Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, January 2011, p.16. <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>

²¹ http://cgrs.uchastings.edu/law/gender_guidelines.php

²² Swedish Migration Board, *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001.

²³ Swedish Migration Board, *Guidelines for Investigation and Evaluation of Asylum Cases in Which Persecution Based on Given Sexual Orientations is Cited as a Ground*, 28 January 2002.

²⁴ <http://rajfire.free.fr/IMG/pdf/exchange-for-change-le-guide-04-05-2010.pdf>



An activist at the Riga Pride March, 31 May 2008. © Amnesty International

CONTACT US



endfgm@amnesty.eu
www.endfgm.eu



ewl@womenlobby.org
www.womenlobby.org



ioel@ilga-europe.org
<http://www.ilga-europe.org>