

Facilitating the disclosure of gender-related persecutions in European asylum procedures

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Summary

Women might be persecuted in their country of origin, in camps and on the move for motives connected to their gender. It can include sexual violence, intra-familial violence, forced marriages, female genital mutilations, forced sterilization or abortion.

Based on a consensus that women and girls face gender-specific challenges in accessing a fair and just assessment of their claims, a number of legislative tools have been developed by international, European and national bodies. However, the fact that legislative standards are both rigorous and vague enables the possibility for gaps between legislative tools and their implementation to arise. Moreover, despite some EU countries having made considerable efforts to incorporate gender-sensitivity in asylum procedures, a number of factors linked to the EU's migration and asylum policies indirectly affect the environment of disclosure during hearings and thereby prevent the adequate implementation of existing legal tools. Some of these political factors include fast-tracked asylum procedures, cuts in budget, a prominent focus on credibility assessment in the

refugee determination process and a strong politics of return. As a result of this political framing, asylum instances are expected to conduct hearings in such a way that disclosure happens in a fast, concise, coherent and credible manner. These expectations cannot be met in the case of disclosing gender-related persecutions, among others, for reasons that are psychological, trauma-related, and/or culture- and gender-specific.

Much of the literature on Syrian women covers the risks Syrian women and girls face in times of crisis, both in Syria and in neighboring countries – Jordan, Lebanon, Iraq, Egypt, and Turkey. Consequently, responses have involved working towards reducing gender-based violence, mostly focusing on prevention and protection programs. One example is the Child Protection and Gender-Based Violence sub-working groups in Jordan, established in February 2012 to coordinate prevention and response to children and women affected by the crisis in Syria and who are living in camps, sites, and host communities. However, nothing has been written about the consideration of gender-related violence experienced by Syrian women in the context of asylum procedures in Europe. The choice of Syria as a case-study aspires to make up for that gap. Indeed, while critiques have argued that Syrians receive preferential treatment in comparison to other refugees from governments, volunteers and humanitarian agencies, this report highlights that these conclusions do not apply to the realm of Syrian women's gender-related asylum claims.

The general lack of gender-sensitivity in European asylum procedures is not solely applicable to the Syrian case. The fact that no gender-disaggregated data on the percentage of women asylum-seekers with regards to their specific countries of origin is available echoes this point. Thereafter, this report also explores gender-related violence in Eritrea to reflect the prevalence but also the diversity in the nature and types of current gender-related persecution in different countries. Figuring at the five top source countries of asylum-seekers in 2014 together with Iraq, Afghanistan and Kosovo, both Eritrea and Syria represent significant contemporary asylum trends (UNHCR, 2014).

Overall, the report intends to demonstrate the need to adapt a gender- but also case-specific sensitive glance during hearings in the asylum procedure. Thereafter, it sheds light on recommendations and potential measures aiming to recover the gap between existing legal tools and implementation to promote the adequate protection of women who have experienced, or fear to experience, gender-related forms of persecution.

Gender-related persecutions and asylum claims in Europe

An increasing proportion of asylum-seekers in the EU are women. Even if figures vary across countries, women accounted for 47 per cent of the European migrant population in 2013 and 47 per cent of the asylum seekers in 2014 (Eurostat, 2013; 2014). Women are specifically vulnerable to

multiple forms of discrimination and often lack the legal literacy to ensure the protection of their rights (European Women’s Lobby, 2010). According to World Bank data, women between the age of 15 and 44 are more at risk from gender-related violence than from cancer, car accidents, war and malaria (UN, n.d.). This report therefore focuses on women but does not intend to disregard the impact of gender-related persecutions in the case of male applicants.

Women might be persecuted for motives connected to their gender when they seek protection in Europe. ‘Gender-related persecution’ is the commonly used term in international refugee law, but denotes quite a varied set of possible claims. Based on the Geneva Convention and the ‘membership to a social group’ criteria, a typology that clearly identifies gender-related asylum profiles exists (UNHCR, 2003). The typology is composed of seven gender-based persecutions – honor killing, forced marriage, domestic and intra-familial violence, sexual violence/rape, persecutions based on sexual orientation or gender identity, female genital mutilations, forced sterilization and forced abortion. While gender-related claims have typically encompassed the persecutions cited above, it should by no means be limited to this list.

Existing legal tools in asylum procedures

UNHCR

Refugee women have been of concern to the UNHCR, refugee policy makers and states since the 1990s. UNHCR has functioned as a leading figure to include gender in refugee law. The UNHCR supervises the implementation of the Geneva Convention and ensures a contemporary interpretation – through recommendations and guidelines – of the latter. In 1991, it published its Guidelines on the Protection of Refugee Women, which aimed to “integrate the resources and needs of refugee women into all aspects of programming to ensure equitable protection and assistance activities”. These guidelines were developed both as a document to serve internal purposes within the UNHCR but also for governmental policies and standards. In 2002, UNHCR published Guidelines on gender-related persecutions aiming to provide guidance to states, decision-makers and practitioners. These Guidelines define in detail how the Convention can and should be interpreted and adapted in a gender-sensitive manner, as well as how an asylum procedure can be gender-sensitive. In 2002 and in 2005, the UNHCR has developed a number of training materials of special relevance for gender-sensitive asylum procedures. Finally, the UNHCR published the Handbook for the Protection of Women and Girls (2008), which outlines legal standards, principles, roles and responsibility in order to secure the protection of refugee women and girls.

European Directives

The *Qualification Directive 2011/95/EU* (Recast) outlines standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

While the previous Directive (2004/83/EC) did not clearly adopt a gender-sensitive point of view when addressing reasons for persecution (art.10), this Directive reflects a certain evolution with regards to the interpretation of the Geneva Convention, especially when considering the persecution ground ‘membership of a particular social group’. Indeed, art.10(d) indicates that gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group. Moreover, the Directive claims that for the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilization or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution.

The *Asylum Procedure Directive 2013/32/EU* (Recast) includes a number of substantive changes that had to be made to the Council Directive 2005/85/EC. Similarly, the new Procedure Directive focuses on common procedures for granting and withdrawing international protection. In comparison to the previous Directive of 2005, it is clear that an effort has been made to integrate gender into the Directive. Indeed, it recognizes that certain applicants may be in need of special procedural guarantees and mentions gender, sexual orientation and gender identity as a potential case. Those applicants should be identified and 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. The Directive also seeks to ensure substantive equality between female and male applicants, and therefore urges examination procedures to be gender-sensitive. In particular, personal interviews should be organized in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. Art.15(a)(b) indeed deals with requirements for personal interviews and indicates that member states shall ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant’s cultural origin, gender, sexual orientation, gender identity or vulnerability. Moreover, Art.15(b) adds that wherever possible, member states shall provide for the interview to be conducted by a person of the same sex if the

applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of 'safe third country', the concept of 'safe country of origin' or the notion of subsequent applications. Art.10.3(d) concerns the requirements for the examination of applications and specifies that 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.

Legal availabilities and challenges in implementation

The recent GENSEN report, "Gender-related asylum claims in Europe", compares laws, policies and practices of gender-related asylum claims in nine EU member states¹ (Ali, et al., 2012). Sweden, the UK, and Belgium systematically offer the possibility for women to choose the asylum interviewer's gender. This possibility has shown to be hardly met for interpreters in Belgium, France, Hungary, Romania and the UK. In all countries studied, each woman has the right to individual assessment. However, critiques show that especially in the case accompanied women, men are sometimes perceived as the "main applicant" and the woman's claim is then treated in relation to her husband's claim, even though the woman might have a whole range of other reasons motivating her claim. As a consequence, the woman's version is treated as a complement to the story of the husband or as a way to test the credibility of the husband's claim (De Meyer & Blommaert, 2004). Medical and/or psychological assistance before the interview is possible in Belgium, Italy, Spain, Sweden and the UK. However, this right is not systematic in practice. In these same countries, women benefit from the right to be accompanied by a lawyer and by a person of their choice in the case of Belgium, Italy and the UK. Childcare during interviews is only possible in Belgium and the UK. Anywhere else, women are faced with the decision to either withhold important information or disclose experiences in front of their children. Belgium is the only country in Europe with an administrative office dedicated solely to gender in asylum claims ('gender cell' – CGRS), and providing gender-sensitive training for staff at immigration reception facilities. Belgium is also the only country that develops detailed gender-based statistics on the different types of persecution in gender-related asylum claims (Ali, et al., 2012). Finally, most countries, with the exception of France, Italy and Spain, have developed gender-sensitive guidelines for interviews.

Some efforts have been made to incorporate gender-sensitivity into asylum procedures and to allow asylum-seekers to present all the elements of their claim. However, the Gensen report

¹ Belgium, France, UK, Sweden, Italy, Spain, Hungary, Romania, Malta

concludes that there is a general lack of gender-sensitivity in European asylum policies and that women are not guaranteed consistent gender-sensitive assessment when they claim asylum in Europe. Indeed, UNHCR challenges the Procedures Directive's effectiveness, especially due to available exceptions and discretion. The fact that legislative standards are both rigorous and vague enables the possibility for gaps between legislative tools and their implementation to arise. Parallel to the development of these practices, Europe has been witnessing the increasing mobilization of the radical right and anti-immigrant sentiment in most of European countries in the last years. The idea that migrants are a threat – a phenomenon to be placed on the security agenda, to limit and control – has become normalized and accepted. These trends have achieved parliamentary representation in such a way that it does not leave asylum procedures unaffected. In this context, the Gensen report highlights that the interviews during the asylum procedure are generally conducted in a confrontational rather than a trusting atmosphere. Political ideas have the power to make legal availabilities dangerously redundant. Political decisions such as the reduced time-frame to treat asylum claims, a strong politics of return, cuts in budgets, the desire to control migration and credibility, conflict with recommendations provided both in the UNHCR guidelines and the European Directives. These political factors affect the quality that asylum instances and asylum experts are able to provide in their work and in providing special support to vulnerable persons. In this context, while the focus of asylum instances should theoretically be on the risk of persecution, asylum instances and experts are unable to take a legal approach respecting fundamental rights of people in need of protection and become 'corrupted' by political and societal ideas and influences. As a consequence, very scarce consideration is given to difficulties encountered by victims of gender-based violence who are unable to disclose experiences immediately, spontaneously and in a full, accurate and credible manner. This way, the access of (female) asylum-seekers to a fair and just asylum procedure is limited. The next section introduces the case studies on Syria and Eritrea to show the prevalence and diversity in experienced gender-related violence. Therefore, it does not only highlight the necessity for gender-sensitive asylum procedures, but also for case- and context-specific ones.

Case study 1: Syrian women and gender-related violence

Since the beginning of the war in 2011, over 4 million Syrian refugees have fled, mainly to Iraq, Jordan, Lebanon and Egypt. The experience of gender-based violence among Syrian women is tightly linked to and aggravated by the crisis. In times of conflict, everyone is affected by violence. However, women and girls in particular are more at risk of facing gender-based violence. According to the literature, sexual violence, domestic violence and early marriage are the most common types of gender-based violence currently experienced by Syrian women and girls (Anani, 2013; IRC, 2014).

Conflict-specific factors such as forced displacement, family separation, lack of structural protection and restricted access to safe services contribute to the intensified likelihood for gender-based violence to arise.

The relationship between conflict and sexual violence, as well as the use of rape and sexual assault as a weapon of war has been studied thoroughly in the literature (Leatherman, 2011). A Human Rights Watch report shows that Syrian women's mobility or engagement in public life is limited due to the increasing fear of sexual violence, harassment, or kidnap (2014). Indeed, fear of sexual violence is often cited by refugees as one of the triggers for displacement (UNHCR, 2014). In the case of Syria, records show that women might be raped or sexually assaulted by armed groups during house searches, at checkpoints or in detention centers, both in Syria and in neighboring countries. In camps, women have reported being sexually harassed and exploited by men delivering humanitarian aid (IRC, 2014). A study conducted by UN Women in the Kurdistan region of Iraq reveals that every five women interviewed has been offered money for sexual services, and every ten women reported having been pressurized by government employees, security officers, police NGO members originating from both Syrian and non-Syrian communities to participate in sexual relationships (2014). These exploitative sexual practices happen in Lebanon as well, in the case where women and girls have shown to engage in non-consensual 'survival' sex in exchange for food, money or other goods (Anani, 2013)

Early marriage happened as a practice before the war in Syria. However, the war has contributed to an increased prevalence, girls marrying younger and under different conditions. According to a survey conducted by the UNICEF in Jordan, 31 per cent of all registered marriages in the first quarter of 2014 faced an early marriage compared to 25% in 2013 (2014). In practice, young girls are getting married to ensure their protection in the absence of a male figure in the family or marrying them to an older man unknown to the family. Financial insecurity linked to high rates of unemployment might additionally push families to marry their daughter to reduce the number of dependents (Global Protection Cluster, 2013).

Finally, women are more vulnerable to domestic violence than before the conflict. A sub-working group responsible for sexual and gender-based violence in Jordan has indicated that half of the women presenting themselves at gender-based violence services experienced some form of domestic violence (2014). A possible factor explaining this increasing tendency could be a lower self-esteem and threatened masculinity experienced by men in relation to their experience of being a refugee (Anani, 2013).

Case study 2: Eritrean women and gender-related violence

The case study on Syria has shown how gender-based violence can be exacerbated in times of crisis. On the contrary, the most prevalent gender-related persecutions in Eritrea – including female genital mutilations (FGMs), rape, domestic violence, enforced child bearing and child marriages – find their roots in cultural and traditional practices. Generally, and especially within the realm of the family, customary views are both dominant and often discriminatory towards women and girls (African Development Bank, 2008).

The Eritrean government has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and recognizes that, according to customary law, women hold an inferior position in society (Make Every Woman Count, 2014). The Eritrean state has attempted to prevent patriarchal attitudes by launching policies protecting the rights of women. For instance, the legislature reserves 30% of seats for women in provincial, district administration and national parliament. In response to early marriage – which has been associated with the predominance of domestic violence, with girls being at greater risk of physical and psychological violence perpetrated by their husbands, or other members of their extended families – the state has changed the legal age to 18. This had been common practice among some Eritrean communities and, despite it still being common in rural areas, there is evidence to show that it is on the decline (African Development Bank, 2008). Yet, customary laws and practices often show to be stronger than policies protecting women's rights (OMCT, 2003). In the case of marital rape for example, the penal code rules out the prosecution if the perpetrator of rape decides to marry the victim. This provision indeed finds its roots in customary law with family honor predominating sexual and emotional trauma. Similarly, a national strategy on the abolition of FGMs has been developed in 2006 and a proclamation made FGMs a criminal offence in 2007. Still, about 89 per cent of girls undergo the practice of having their female genital organs removed.

With these customary roots, the effective implementation of measures against gender-based violence and cultural practices that violate the human rights of girls and women is challenging. Its eradication requires the involvement of the family/community, governmental as well as grassroots civil society organizations in order to engage with histories of inequalities, complex narratives and experiences to empower women and girls. The case of Eritrea shows that the commitment of a given state to the protection of women's rights is not a sufficient variable to assess the prevalence of gender-based violence. This conclusion is extremely relevant to asylum procedures. Indeed, in the comparable case of Guinea, the fact that Belgian asylum authorities started giving negative decisions concerning FGMs in 2014 based on the information that the country had experienced a change in

mentality has been heavily criticized. Indeed, Belgium had based itself on changes in the legislation, even though alternative sources such as the Demographic and Health Survey reported the continuous prevalence of the practice.

Difficulties in disclosing gender-related violence in asylum procedures

Kim (1994) has argued that during hearings, “women with gender-related claims of persecution face additional burdens when they are called upon to state their claims and speak of experiences that are often difficult and humiliating” (p.5). Indeed, false reporting in the case of gender-related persecution has shown to be less of an issue than underreporting. Recent estimates indicate that only around 7 per cent of victims of gender-related violence disclose and report (UNFPA, 2013). In a study on Syrian women, interviewees were asked about the impact of sexual violence/ harassment. Most indicated not having reported it and having tried forgetting it, while some have felt guilty (Anani, 2013). Similarly, a number of studies report that all forms of violence against women are underreported in Eritrea (African Development Bank, 2008). This section therefore highlights the potential reasons why, despite the expectation of the asylum procedure, a woman might not disclose her gender-related problems to asylum instances immediately, spontaneously and in a full, accurate and credible manner.

Generally, the private/intimate/personal nature of gender-related persecutions, negative feelings of guilt, the avoidance of harsh memories, humiliation or shame have been cited in the literature as possible factors affecting disclosure (Ali, et al., 2012; Van Vliet, 2010). Some gender-related persecutions leave traumatic traces that can make a woman unable to speak or open up in a consistent, accurate manner. A study on the impact of sexual violence on disclosure concluded that asylum claimants who have experienced sexual violence reported more difficulties to disclose personal information at asylum hearings and scored higher on measures of post-traumatic stress symptoms (PTSD) in comparison to asylum claimants who have no history of sexual violence (Bögner, et al., 2007). The impact of trauma on women subjected to gender-related violence often leads to time lapses, inconsistencies and difficulties to chronologically and fully present a claim (UNHCR, 2005).

Culturally-specific aspects also play a role. If sexuality is a taboo or perceived as improper in a woman’s country of origin, she might not feel comfortable or even dare to share her story to her lawyer or at hearings. Moreover, a report on gender-related asylum in the Syrian crisis indicates that women might fear stigma, social exclusion, honor killings or reprisals (UNFPA, 2013). Especially in the case of gender-related persecutions of traditional nature, such as forced marriages or FGMs, women might perceive the violence as the norm and might therefore not question that these practices do

not take place elsewhere in the world. Not knowing that such information is relevant to an asylum claim can therefore lead a woman not to disclose her experienced gender-related violence.

Women might also, as a result of their social position or experience in their country of origin, fear the authorities, their perpetrators (husbands, armed groups, civil servants, etc.) and/or have been conditioned or threatened by them (Ali, et al., 2012). For instance, it has been shown that Syrian women have reported being sexually harassed by men delivering humanitarian aid (IRC, 2014). Some women continue facing discrimination and violence in detention centers or in the host country. Women might therefore not find the hearings a trustful space to open up. Additionally, the hearing environment that highly relies on clear and efficient verbal communication is limiting in that it might not be best suited to one's personality and/or cultural idioms of sharing experiences.

The often-required presence of an interpreter also influences women's disclosure (Kim, 1994). Not exclusively, but particularly in the case of gender-related asylum claims, gathering material to prove a claim is extremely hard (Bögner, et al., 2007). Women might not have been sufficiently informed about their rights during the asylum procedures and what qualifies for asylum (UNHCR, 2005). Moreover, protection officers are not objective. They are informed by their own personal experiences, identities, prejudices and cultural essentialism. Therefore, protection officers might not be prepared or able to account for disclosure. Already mentioned societal and political influence indirectly creates an environment of distrust in hearings, where suspicion might exist in the tone of protection officers, and which stands in opposition to the trusting, open and reassuring atmosphere in hearings that both the UNHCR and European Directive insist on. On top of the difficulties to disclose, asylum-seekers also have to express themselves in a way that they are believed by protection officers.

Conclusions and Recommendations

Based on a consensus that women and girls face gender-specific challenges in accessing a fair and just assessment of their claims, a number of legal tools have been developed by governmental and international bodies over time. This policy report suggests that legal availabilities gain relevance only when they are linked with practice, the way they are interpreted and applied. Indeed, a number of factors, some of which are linked to the EU's migration and asylum policies, prevent the adequate implementation of existing legal tools. These factors affect the environment of disclosure during hearings in such a way that women, no matter the profile, are expected to provide full, supported and credible accounts of their claims.

This report has shown that gender-defined experiences can affect a persecution that is either feared or lived. States should ensure that a gender-sensitive interpretation is given to each of the

Geneva Convention grounds when assessing whether a claimant fits the refugee definition. Having used Syria and Eritrea as case studies to highlight the prevalence as well as the diversity of gender-related violence, and having highlighted the difficulties for women to disclose gender-related asylum claims, the following recommendations should be complemented with long-term measures to work towards ensuring the provision of a fair and adequate treatment of gender-related asylum claims. Progressively addressing the challenges to the effective implementation of already existing legal tools requires proactive, critical and continuous effort in a context of constantly changing realities.

- Aside from the already significant efforts made by the European Commission to reform European Directives to include gender-sensitivity, a more practical step towards ensuring the efficient implementation of the existing legal tools has to be taken. As part of the European Union's commitment to establish a Common European Asylum System (European Commission, n.d.), a European gender expert umbrella group should be formed with the aim of guiding decision-makers in each Member State to interpret gender-related asylum claims. Belgium is the only EU Member State having formed a 'gender cell' to improve and harmonize practices with regards to gender-related claims within the asylum procedure. More gender-sensitive entities are necessary to ensure the promotion, adoption and implementation of UNHCR's Gender Guidelines and European Directives. The 'gender cell' could inspire the development of other gender-specific asylum entities, especially with regards to its institutionalization and structure. Efforts to include gender-sensitivity in asylum procedures should be highlighted through obligatory reports each year. Funds allocated by the European Refugee Fund to gender-specific entities in different Member States should be directed towards:
 - a) Collecting and producing gender-disaggregated data. Belgium is the only European country that develops detailed gender-based statistics on the different types of persecution in gender-related asylum claims. Nevertheless, while all countries collect data on countries of origin information (COI), none collect up to date gendered data nor include a section on gender-related violence. Without adequate gender-sensitive data, women's asylum claims will not be treated fairly.
 - b) Conducting obligatory training on gender-related persecutions, on context-specific forms of violence that women might experience for protection officers and cultural sensitivity. These would support an environment of disclosure that is safe, non-stigmatizing and informed. In this context, evidence-based approaches rather than a focus on credibility

should be encouraged. Certain facts such as gender and nationality might in themselves reveal an unquestioned risk of persecution. In other words, if asylum instances have enough evidence to support the fact that a given woman has been subject to gender-related violence, how coherent her story is should not matter. This situation should in itself activate the obligation to probe, reverse the 'burden of proof' and assess whether these elements are sufficient to justify a claim.

- c) Increasing access to safe spaces in which trained professionals can provide psychosocial and medical support (specialized, confidential, supportive services). Women often lack the legal literacy to ensure the protection of their rights (European Women's Lobby, 2010). Staff in asylum centers as well as lawyers should be sure to inform women about their rights and redirect women to psychologists, doctors and/or relevant civil society actors prior to hearings, both as a means to ensure the protection of their rights, as well as to promote the fair treatment of their asylum claims. In that sense, the need to create a network with competent and specialized external actors is fundamental.

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