

Gender-related asylum claims in Europe



A comparative analysis of law policies and practice focusing on women in nine EU Member States



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Comparative analysis of law, policies and practice focusing on women in nine EU states

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Executive Summary

Across the European Union, women constitute on average one in three of those applying for asylum in their own right. These are women who have been forced to flee from rape, sexual violence, torture and other human rights abuses overseas. Women and those fleeing gender-related persecution are entitled to access a fair and dignified asylum process regardless of the State in which they claim asylum.

This research was conducted in response to long-standing concerns that national asylum systems across Europe fall well short of this requirement. It was produced as part of the Gensen project, which ran between October 2010 and May 2012 and which aimed to enhance gender equality in the European asylum process.

Gender-related asylum claims in Europe provides a comprehensive analysis of law, policies and practice relating to asylum and gender issues in nine EU member States:

<i>Belgium</i>	<i>Italy</i>	<i>Spain</i>
<i>France</i>	<i>Malta</i>	<i>Sweden</i>
<i>Hungary</i>	<i>Romania</i>	<i>United Kingdom</i>

The research is based on 60 interviews with women who have claimed asylum in the EU since 2008 after fleeing from 27 different countries. It also draws on the responses contained in 132 questionnaires, distributed to lawyers, advocates, NGOs, reception centres, UNHCR personnel, national authorities and judges working on asylum in all nine countries.

Main findings

There are vast and worrying disparities in the way different EU States handle gender-related asylum claims.

As a result, women are not guaranteed anything close to consistent, gender-sensitive treatment when they seek protection in Europe. Women seeking asylum are too often confronted with legislation and policy that fail to meet acceptable standards, while even gender-sensitive policies are not implemented in practice.

One young Sri Lankan woman, seeking asylum in France, was forced to take her seven year-old son with her to her substantive asylum interview. She explained: *"He heard it all. At one point, he asked if he could go out because what he heard was too hard for him"*.

For example:

- Gender guidelines can assist in providing a gender-sensitive asylum system. Yet only **Malta, Romania, Sweden** and the **UK** have adopted their own national gender guidelines to assist asylum decision-makers. There are no EU-wide guidelines, despite their importance if harmonised gender-sensitive asylum systems are to be implemented across Europe.
- EU member states have a legal and binding obligation to collect and publish gender-disaggregated asylum statistics. Yet while **Belgium** provides extremely helpful data beyond these minimum requirements – by publishing statistics on types of persecution in gender-related claims – only **Sweden** and the **UK** publicly disaggregate statistics at appeal nationally. **Romania** publishes no gender statistics at all.
- While some States recognise that a range of gender-related persecution can engage the Refugee Convention, poor decision-making leaves many women at risk of being denied protection to which they are entitled.
- Some forms of harm are overlooked in national asylum practice. For example, authorities in **France, Malta** and **Romania** do not always accept that Female Genital Mutilation (FGM) can amount to persecution. In **France** and **Belgium**, asylum claims based on fear of FGM – and renewal of their leave – are reliant on an invasive annual medical examination. In **France**, refugee protection is not extended to girls born on their territory and at risk of FGM, and girls in this situation receive, at best, a one-year renewable permit. As a further example, **Spain** fails to recognise trafficking as a form of persecution.
- It appears that UNHCR Gender Guidelines urging States to interpret all five Convention grounds in a gender-sensitive manner are overlooked in **all** the countries under research. There were few examples



of gender-related persecution being considered under the Convention grounds of political opinion and religion, and almost none under the Convention grounds of race and nationality.

- In all of the countries researched, gender-related persecution was predominantly considered within the parameters of the particular social group (PSG) ground of the Refugee Convention. While the examples of good practice in this area are encouraging, it is important that PSG does not become a ‘fall back’ option for all gender-related asylum claims.
- Trauma among victims of sexual violence is known to affect the coherence of later accounts, and there is evidence of good practice in Italy and Malta where the burden of proof is lowered in cases of rape and gender-based violence.
- While all countries provide female asylum interviewers on request, only Belgium, Sweden and the UK systematically ask women for their preference. Childcare during interviews is only provided in Belgium and the UK – elsewhere, women must choose between withholding important information and disclosing traumatic details in front of children.
- Although national policies in Hungary, Sweden and the UK refer to the importance of considering gender issues when making decisions on internal flight alternative, in practice decisions are still reached without any such consideration.
- Belgium is the only country that provides gender-sensitive training for staff at immigration reception facilities, despite widespread reports of gender-based violence and sexual harassment in accommodation centres across all the countries researched.

One Kosovan woman, seeking asylum in Hungary, explained: *“When we arrived in Hungary, the police was rude with us. They checked us and we had to take off our clothes. For me – as I am an old woman – this was very embarrassing”.*

Main recommendations

Asylum seekers forced to flee gender-based persecution and seek protection in Europe must have access to a fair and dignified asylum system, wherever they make their claim.

The Common European Asylum System was established to harmonise EU asylum legislation. However, this research shows that such harmonisation is still far from reality in the handling of gender-based asylum claims.

Recommendations include:

EU member states should

- adopt and implement gender guidelines for initial decision-makers and judges, based on UNHCR gender-relevant guidelines.
- ensure their procedures are gender-sensitive.
- appoint gender focal points in their national asylum authorities.
- make their data collection gender-sensitive by providing publicly gender-disaggregated statistics at all levels of the asylum process.
- sign and ratify the Council of Europe *Convention on preventing and combating violence against women and domestic violence*.

The European Commission, the European Parliament and the European Council should ensure that gender issues are taken into account in any future CEAS legislation.

The European Asylum Support Office should.

- promote the implementation of existing UNHCR guidelines and standards on gender-sensitive asylum systems.
- adopt EU best practice guidelines on gender-sensitive asylum systems to address any protection gaps.
- integrate a gender perspective into all aspects of its work programme.
- implement the recommendations detailed in *Engendering the European Asylum Support Office*.

European asylum NGOs should

- appoint gender focal points and develop networks to exchange expertise and good practice.
- consider strategic litigation in the framework of national and European equality legislation to improve the treatment of, and the asylum procedure for, women and LGBTI persons seeking asylum.

One Congolese woman, seeking asylum in the UK, explained that her financial support was inadequate to meet the needs of her baby daughter. She explained that she was often forced to do without nappies, clothes, milk and food for her child.

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