

Guidelines for Protecting Women and Girls during first entry and asylum procedures in Greece



Athens, June 2011

Foreword

In recent years Greece has faced a large influx of mixed migration flows and it is becoming increasingly difficult to distinguish between persons entitled to international protection (refugees and beneficiaries of subsidiary protection) and economic migrants. The Greek authorities are gradually proceeding to reform the system for managing migration flows as well as the asylum system. In this context it is important to identify the special needs of women and girls in need of international protection, provide them with support and recognise their status as beneficiaries of international protection so that they can enjoy the protection to which they are entitled in Greece.

The General Secretariat for Gender Equality and UNHCR have cooperated since 2002 with a common goal of promoting the rights of refugee women and girls in Greece. In an effort to strengthen this cooperation with a view to addressing matters concerning the protection of women and girls more substantially and directly, the two agencies approached the Ministry of Citizen Protection in order to adopt common guidelines. This document is the result of the collaboration of the Ministry of Citizen Protection, the General Secretariat for Gender Equality and UNHCR. It is intended for professionals who are involved in the provision of services of first reception of citizens of third countries, as well as personnel conducting asylum interviews or in any way involved in asylum procedures. It aims at assisting in the fairer assessment of international protection needs of refugee women and girls seeking asylum, as well as to provide guidelines for the treatment of women and girls during relevant procedures including reception during first entry, detention, access to the asylum procedure and conduct of the interview. The drafting of the leaflet was undertaken by Alexia Vassiliou following research, compilation and processing of texts by UNHCR and other competent bodies, as well as the relevant national legislation.

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Contents

I.	Introduction: The risks faced by refugee women and the need for specific action.....	3
II.	Guidelines during first reception.....	6
III.	Guidelines for refugee status determination.....	8
IV.	Guidelines for the protection of girls.....	11
V.	Appendix – Interpretation of the Refugee Convention definition in the context of gender-based claims.....	13
VI.	Sources and useful reference material.....	15

I. Introduction: The risks faced by refugee women¹ and the need for specific action

Persons fleeing persecution, who have left their countries of origin and arrive at a foreign country to seek protection, are exposed to risks which can further violate their rights and stand in the way of securing the protection to which they are entitled by law. Without regular means of reaching a country where they can seek asylum, refugees often have to resort to smugglers and dangerous routes, arriving at a safe country in an irregular manner.

In this precarious situation faced by refugees, women and girls are exposed to special problems and have special needs, as has been acknowledged by UNHCR's Executive Committee²:

"While forcibly displaced men and boys also face protection problems, women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights and therefore that specific action in favour of women and girls may be necessary to ensure they can enjoy protection and assistance on an equal basis with men and boys".

Refugee women face particular challenges related to their gender, their roles and their position in society. They are less likely than men to have access to even the most fundamental of rights and are more likely to be exposed to discrimination and violence, which are exacerbated in situations of conflict or forced displacement.

Due to cultural or social reasons, women may have a limited awareness of their rights or the existence of mechanisms to safeguard those rights, including because of their position in society in their country of origin. In their countries of origin they may have been subject to traditional practices which are harmful to women, they may have been excluded from meaningful participation in community structures, or they may have been victims of sex and gender based violence or destitution. Once displaced, they are further isolated and vulnerable due to breakdown of family and community support structures and values.

These factors combine to expose women to the following risks and challenges:

- **Violence during their journey** - Women who pay smugglers to take them out of their country can easily find themselves in dangerous or degrading situations. They may, therefore, arrive at the country of asylum traumatised having been raped or exposed to other violence and/or abuse during the journey.
- **Violence or abuse in detention or first reception centres** - In collective reception centres, women on their own may also be at risk of further abuse or violence, if they are not accommodated separately from men or if there are not sufficient safeguards while in first reception or detention.
- **Disempowerment due to procedural barriers and lack of adequate and reliable information** - Men are typically seen as the "principal applicant" when a family claims asylum and act as the spokesperson of the family, through whom information and assistance is channelled. Women may be unaware of rights to which they are entitled and may not expect to have a right to make a claim in their own right if accompanied by a male relative whose claim is being examined. Therefore, their claim to refugee status, even one which is stronger than the male relative's claim, may be overlooked. Moreover, when women seek asylum, it is necessary to bear in mind how persecutory treatment may differ according to age or gender. They

¹ References to refugee women include refugee girls and are intended to include all women and girls who may be entitled to international protection on the grounds set out in the 1951 Convention relating to the Status of Refugees, regardless of recognition of their status, and therefore cover asylum-seekers and would-be asylum seekers.

² Executive Committee Conclusion No. 105 (LVII), 2006, Women and Girls at Risk.

themselves may be unaware that certain types of harm they have suffered constitute grounds for an asylum claim.

- **Limited access to assistance** - The channelling of information and assistance through male family members may limit women's access to assistance. Any difficulty accessing assistance may be critical in cases where women have suffered traumatic experiences and are in need of medical or psychosocial care.
- **Inability to present their claim due to cultural or psychological barriers resulting in credibility questioned** - Women seeking asylum may not want their husband and family to know about the persecution they have suffered and may, therefore, be silent about experiences or fears that relate directly to their need for international protection. Furthermore, they may be reluctant to speak about their experiences in front of male interviewers or interpreters, they may lack experience or confidence in dealing with persons of authority, all of which can affect their demeanour when presenting their claims. If they have suffered traumatic experiences they may be unwilling or unable to recount these and may avoid or refuse to answer questions, in a manner which may be mistaken for lack of credibility. Women may also have difficulty establishing the credibility of their claim if their fear of persecution relates to private, domestic matters, as in the case of domestic violence or other forms of gender-related persecution, including in relation to sexual orientation.
- **Exposure to domestic violence which remains undetected** - The stressful conditions of displacement can lead to an increase in instances of domestic violence and abuse, which may remain unreported, particularly if the victims have no independent access to information about support and protection. Women may feel that they have to remain in their situation and accept the abuse if they believe they have no individual right to refugee status or assistance.
- **Exposure to trafficking** – Single women in particular may often fall victims to traffickers and disappear in the course of the asylum procedure, especially if they do not have access to effective protection, including material support.
- **Exposure to harassment or abuse by persons of authority** – Lack of support, ignorance of their rights and fear of authority may cause women or girls to be more vulnerable to harassment or abuse by persons who control their access to procedures and documentation, including humanitarian workers.
- **Additional individual risk factors** - Certain categories of women may face particular risks because of the women's individual situation. These include women who:
 - are alone or single heads of household
 - have disabilities or are in a very poor state of health (including HIV/AIDS)
 - are older, including widows without family or community support
 - oppose social norms, including in relation to their sexual orientation, opposition to female genital mutilation, under age or forced marriage
 - are destitute.

The purpose of these Guidelines is to offer some basic guidance in addressing the concerns and challenges faced by women and girls arriving in Greece having fled persecution in their countries of origin. The first part of the document addresses the general challenges faced by women and girls which affect their journey from their country of origin as well as their situation following arrival in the country where protection is sought. Attention is drawn to the special consideration that needs to be given in making practical arrangements for their reception and ensuring access to asylum procedures. The second part of this document summarises the forms of harmful treatment to which refugee women are subjected because of their gender and discusses how these can constitute grounds for refugee status in accordance with the 1951 Convention (and its 1967 Protocol) relating to the Status of Refugees. It also highlights the factors that need to be considered in assessing women's claims for protection and ensuring that the refugee status determination procedure is gender-sensitive. The third part

of this document addresses issues specifically concerning girls and the special protection needs they have as children.

Source materials, offering a wealth of information on the issue, are listed at the end of this document for ease of reference.

II. Guidelines during first reception

- **Screening and registration** - Ensure that properly trained staff³, aware of the risks faced by women and girls, carry out registration of women in a manner which identifies individuals with specific protection and assistance needs (e.g. victims of violence or sexual abuse, victims of trafficking, women facing serious diseases such as HIV/AIDS, female heads-of-household and unaccompanied women) and highlight those at heightened risk⁴.
- **Application of special provisions regarding vulnerable persons** - Paragraph 2 of Article 11 of Law 3907/2011 specifically defines “vulnerable groups” as referring to: unaccompanied or separated children, persons who are disabled or terminally ill, elderly persons, pregnant women or nursing mothers, single-headed families with children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, and victims of trafficking. According to Law 3907, these groups are to be identified and referred to the competent body responsible for their support or protection. Similarly, Article 17 of P.D. 220/2007 defines vulnerable groups as minors, unaccompanied minors, disabled people, elderly persons, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and requires the competent authorities and local administrations to take care to provide special treatment to applicants belonging to these groups.
- **Inclusion of female staff in registration teams** - For cultural and psychological reasons, women and girls may find it easier to speak to female staff (including interpreters and cultural mediators) concerning their experiences and personal details, and to provide the information which is necessary to determine their specific protection and assistance needs.
- **Adequate design of accommodation** - Ensure that, where the detention of women is unavoidable, they are detained separately from men⁵ and that first reception centres provide separate well lit accommodation for female detainees, which can be locked. Pregnant women and nursing mothers must not be detained⁶.
- **Information regarding rights and available assistance** - As early as possible, provide information regarding the rights to which women are entitled as well as the types of assistance (medical, psychosocial and legal) which are available to them.
- **Provision of counselling, psychosocial and medical care** - Co-ordinate the provision of appropriate care as well as access to safe houses if women face domestic violence and abuse or attacks by other members of the community or their household. Give priority to the more vulnerable cases and ensure that access to counselling and care is such as to avoid drawing attention to, or stigmatizing, victims of abuse. Ensure that such care is provided in a gender- and culturally sensitive manner by adequately trained staff. Where possible, female staff should provide these services.
- **Easily accessible and confidential mechanisms for reporting abuse** - Ensure that mechanisms exist for women at heightened risk to raise their concerns and

³ According to Article 9, paragraph 7 of Law 3907/2011 staff of First Reception Centres (“ΚΕ.Π.Υ.”) must be trained for their assigned tasks. In particular, doctors providing their services at First Reception Centres must receive training in the certification of victims of torture, which should be arranged by the Central Authority and responsible Ministries in collaboration with UNHCR.

⁴ UNHCR’s *Heightened Risk Identification Tool*, provides some useful questionnaires that can assist in identifying persons at heightened risk and rating the level of risk faced.

⁵ Article 13, paragraph 6 of P.D. 114/2010 requires that authorities responsible for receiving or examining asylum claims ensure that asylum-seeking women in detention are kept separately from men.

⁶ Article 13, paragraph 6 of P.D. 114/2010.

report abuse, while guaranteeing confidentiality regarding their personal situation. Women should be informed of the existence of these reporting mechanisms and be empowered to access them.

- **Legal assistance, victim support and protection** - In cases of violence or abuse provide access to legal assistance for victims as well as continuing support and, if necessary, witness protection, in order to ensure that perpetrators are brought to justice.
- **Information on risks of abduction and trafficking** - Disseminate information about the risks of abduction and trafficking as well as the availability of protection for victims⁷.
- **Code of conduct for staff** - Establish and implement codes of conduct, including on the elimination of sexual exploitation and abuse, for all staff working in the delivery of services to refugees and other staff in authority, including external service providers and contractors.
- **Information about asylum procedures** - Provide information in simple language and in a gender-sensitive manner, and ensure that women and girls understand that they may present claims in their own right. Explain that the refugee status determination procedure is intended to obtain information for their protection and that it is in their interest to co-operate and disclose information.
- **Co-operation with NGO's and civil society** - State agencies responsible for the first reception of women should co-operate with non-governmental or other civil society organisations in order to benefit from their specialisation in relation to various aspects of the provision of assistance (e.g. psychosocial or legal support) and maximise the protection provided to women refugees.

⁷ Law 3064/2002 provides that victims of trafficking should receive protection and assistance in relation to accommodation, material, medical and psychological support as well as legal assistance and interpreters. P.D. 233/2003 provides details of the assistance and services available to victims of trafficking and lists agencies responsible for providing support and protection to victims. Law 3386/2005 provides for the possibility of granting residence permits to victims of trafficking, stipulates that presumed victims are to be allowed a reflection period in order to recover be able to make an independent decision regarding co-operation with law enforcement authorities and states that during the reflection period presumed victims have access to the care and services referred to in P.D. 233/2003, while the responsible authorities of the public prosecutor and police must prioritise their protection and security.

III. Guidelines for refugee status determination

(i) Refugee status on gender-based grounds

- **Due consideration of possibility that persecution is gender-based** - When considering claims brought by women it is necessary to be aware of the fact that their gender can be a reason for the persecution feared or suffered and that forms of persecution may themselves be affected by gender. Therefore, the definition of a refugee contained in Article 1A(2) of the 1951 Convention should be interpreted with an awareness of possible gender dimensions in the assessment of claims to refugee status⁸.
- **Likelihood of gender-based persecution if certain elements are raised** - Gender-related claims have typically included (but are by no means limited to):
 - acts of sexual violence
 - family/domestic violence
 - coerced family planning
 - female genital mutilation
 - punishment for transgression of social mores
 - discrimination against homosexuals.

For further guidance regarding the interpretation of the Refugee Convention definition in the context of gender-based claims, see the notes in the relevant Appendix.

(ii) Procedural safeguards for women in Refugee Status Determination

(a) Gender-sensitive Refugee Status Determination System

Refugee status determination procedures must be sensitive to the situation and claims of female asylum seekers⁹. Some women may be reluctant to identify the true extent of persecution suffered or feared, because of the shame they feel over what has happened to them. Special attention needs to be given and counselling needs to be provided in order to ensure that women will have the opportunity to overcome psychological or social barriers and present their claims.

⁸ In particular the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 7 April 2011 (signed by Greece on 11 May 2011), which will come into force following ratification by 10 signatories, requires Parties (Article 60, paragraph 1) to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

⁹ Article 60 , paragraph 2 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence provides that "*Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection*".

Refugee Status Determination procedures should be carried out in a manner which ensures that:

- all examiners are familiar with the ways in which gender and age can be relevant to determining whether a particular form of harmful treatment constitutes persecution;
- extensive background information on the situation of women and children in the country of origin is available;
- all adult family members and dependents accompanying a “principal applicant” have a separate status determination interview, (a) if a separate registration interview has not taken place, or (b) if the registration interview revealed that family members may have claims additionally or independently of the “principal applicant”, and/or (c) if any information obtained during the principal applicant’s interview indicates that another family member may have an independent refugee claim;
- women have access to counsellors able to explain how the asylum procedure works, including the possibility that gender related forms of persecution can constitute grounds for refugee status;
- specially trained female interviewers and interpreters are available to women asylum-seekers¹⁰, in particular where it becomes evident that sexual and gender-based violence may be an issue;
- additional counselling and support should be provided to survivors of trauma, in order to reassure them and gain their trust sufficiently to allow them to identify the true extent of the persecution suffered, and help them recover from the trauma;
- claims by applicants belonging to vulnerable groups (as defined in Article 17 of P.D. 220/2007¹¹) are assessed in priority, according to P.D. 114/2010¹².

Decision makers should remember that inability of a claimant to provide documentary proof of matters claimed should not of itself affect the credibility of the claimant. It is actually common for women not to have access to documents and often there is little if any documentary evidence associated with the types of abuse claimed. Therefore applicants must be given the benefit of the doubt.

(b) The interview

- Women should be advised that they may have a valid claim for asylum in their own right.
- They should be given information about the status determination process, access to it, as well as legal advice, in simple language that they understand.
- Women asylum-seekers should be interviewed separately, without the presence of family members¹³, in order to ensure that they have an opportunity to present their case with all details¹⁴ which they might otherwise be ashamed or afraid to discuss

¹⁰ Article 10, paragraph 1 of P.D. 114/2010.

¹¹ Article 17 of P.D. 220/2007 defines vulnerable groups as minors, unaccompanied minors, disabled people, elderly persons, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

¹² Article 8, paragraph 4, of P.D. 114/2010.

¹³ Article 10, paragraph 7, of P.D. 114/2010.

¹⁴ Article 10, paragraph 9, of P.D. 114/2010.

- The interview should take place in an environment which encourages discussion, allows women to feel comfortable and not threatened while safeguarding confidentiality¹⁵.
- Female interviewers and interpreters should be provided¹⁶, in particular in cases that raise issues related to sexual and gender-based violence.
- Interviewers and interpreters should be aware of cultural or religious sensitivities or personal factors¹⁷ such as age or level of education.
- Interviewers should remain neutral, compassionate and objective during the interview, and should avoid any body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate.
- Interviewers should allow the claimant to present her claim with minimal interruption.
- Interviewers should be appropriately trained and specialised, particularly in cases where the claimant is a victim of sexual abuse¹⁸.
- Women should be given access to psychosocial support prior to interview¹⁹, with follow-up counselling to be provided if necessary.
- Interviewers should phrase questions in a manner that will allow the issues relevant to the asylum claim to be revealed, without expecting the claimant to conform to preconceived ideas, e.g. about political involvement, or concepts like “torture”, which the claimant may not associate with the type of harm which she has suffered or fears (e.g. rape, sexual abuse, female genital mutilation etc.).
- Where appropriate, interviews should be structured to take into account traumatic experience and reluctance to discuss matters. In such cases multiple or follow-up interviews may assist in building trust.
- Interviewers should be responsive to the trauma and emotion of claimants and should stop an interview where a claimant is becoming emotionally distressed.
- Interviewers should familiarise themselves with country of origin information, especially in relation to matters relevant to gender-based claims. Information should be obtained regarding the position of women before the law, the application of the law, the political rights of women, the social and economic rights of women, the cultural and social mores of the country and consequences for non-adherence, the prevalence of harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence and the risks that a woman might face on return to her country after making an asylum claim.
- The type and level of emotions displayed during the recounting of her experiences should not affect a woman’s credibility. Interviewers and decision-makers should understand that behaviour is profoundly influenced by cultural difference and trauma. For some cases it may be appropriate to seek psychological or medical evidence.

¹⁵ Article 10, paragraph 8, of P.D. 114/2010.

¹⁶ Article 10, paragraph 1, of P.D. 114/2010.

¹⁷ Article 10, paragraph 9a, of P.D. 114/2010.

¹⁸ Article 10, paragraph 9a, of P.D.114/2010.

¹⁹ Pursuant to Article 10, paragraph 1, of P.D. 114/2010, an asylum seeker is to be granted a reasonable period of time (up to a total of two months) prior to the interview in order to prepare and consult a legal or other adviser to assist him/her during the procedure.

IV. Guidelines for the protection of girls

Unaccompanied girls, or girls who have been separated from their families, are especially vulnerable to trafficking and other forms of abuse. They have special needs associated with their age and the fact that they are deprived of the care of a parent or other primary caregiver and may suffer socially and psychologically due to the separation from their family. They should be treated as children first and foremost and their migration status must always be a secondary consideration²⁰.

The fundamental principle, which needs to be at the core of all actions concerning girls is the priority of their best interests. Article 3, paragraph 1 of the Convention on the Rights of the Child²¹ provides that **“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”** The prioritisation of children’s best interests is also enshrined in the relevant Greek legislation, including in Article 18, paragraph 1, of P.D. 220/2007, Article 12, paragraph 7, of P.D. 114/2010 and Article 20 of Law 3907/2011. The determination of best interests should be based on the individual circumstances of each girl and must consider the girl’s family situation, the situation in her country of origin, her particular vulnerabilities, her safety and the risks she is exposed to and her protection needs, as well as her mental and physical health, education and socio-economic conditions²².

In addition to the guidelines for the protection of women, which apply equally in relation to girls, the following should also be followed:

- **Appointment of guardians** - Where the screening process reveals the presence of unaccompanied or separated girls, immediate steps must be taken for the appointment of a guardian (preferably a female guardian) to safeguard their interests²³. These steps include the immediate notification of the Public Prosecutor for Minors, who will act as a temporary guardian, representing and assisting girls in the refugee status determination procedure. The Public Prosecutor for Minors should then arrange for the appointment of a guardian, whose functions should include:
 - ensuring that all decisions concerning girls are governed by their best interests
 - ensuring that girls receive appropriate care, accommodation and health care
 - providing advice and listening to the girls’ views and wishes
 - liaising between the girls and the various organisations or agencies providing services to them.
- **Exemption from detention** – Unaccompanied girls must never be detained for reasons related to their illegal entry alone²⁴. According to Article 37 (b) of the Convention on the Rights of the Child **“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”**. This is reiterated in Article 32, paragraph 1, of Law 3907/2011. Moreover, Article 13, paragraph 6, of P.D. 114/2010 provides that unaccompanied minors must only be detained for the time necessary to arrange their referral to a suitable reception facility for minors.
- **Provision of suitable, safe accommodation** – According to Article 19, paragraph 2 of P.D. 220/2007, when an unaccompanied minor lodges an asylum application the competent authorities must **“ensure that the accommodation needs of the child are covered by placing him/her with adult relatives, with a foster-family, in**

²⁰ Separated Children in Europe Programme , Statement of Good Practice, 2009.

²¹ Convention on the Rights of the Child, 1989, ratified by Greece through Law 2101/1992.

²² Separated Children in Europe Programme , Statement of Good Practice, 2009. See also UNHCR Guidelines on Determining the Best Interests of the Child, 2008.

²³ Article 19, paragraph 1 of P.D. 220/2007.

²⁴ Separated Children in Europe Programme , Statement of Good Practice, 2009.

Accommodation Centres with special provisions for minors, or in other accommodation suitable for minors and that this form of accommodation shall protect it from the risk of trafficking or exploitation”.

- ***Special procedures for refugee status determination*** - These procedures must be sensitive to the special needs of girls and must ensure that:
 - claims made by girls are prioritised and determined under the regular procedure (i.e. that they are exempt from accelerated asylum determination procedures), in accordance with Article 12, paragraph 2, of P.D. 114/2010
 - they are appropriate to the level of understanding of girls, in a manner which provides them with the possibility to describe their claim by a variety of means, orally, in writing or through drawings/pictures
 - each girl is represented by an adult familiar with her background who can protect her best interests; Article 12, paragraph 1 of P.D. 114/2010 provides that the designated guardian be invited and entitled to attend the interview and to ask questions or make comments therein
 - interviewing is carried out in a child-friendly manner, which includes frequent breaks and an atmosphere which is informal and not intimidating
 - interviewers and interpreters must be specially trained in conducting interviews with children and must address girls using language they can understand.

Moreover, P.D. 114/2010 reaffirms the obligation to safeguard the best interests of the child during the application of provisions concerning asylum-seeking minors.

- ***Appropriate training of staff***²⁵ - All those working with girls must receive appropriate and ongoing training, regarding the rights and needs of girls as well the way to interact and communicate with them. In particular, training should also be given to ensure that those working with separated children are culturally and gender sensitive and understand intercultural communication. Immigration or border police staff and other relevant actors should receive training in conducting child-friendly interviews.
- ***Co-operation with organisations or institutions which specialise in dealing with children*** – As early as possible after the identification of unaccompanied girls, contact should be made with organisations, including NGOs, which have experience in dealing with the special needs of children and can provide specialised assistance, including in relation to efforts made on a national and international level to trace family members and arrange family reunification where appropriate and provided that this does not endanger the girl or other members of her family. The tracing of a girl's family must be based on her informed consent and must be governed by the principle of confidentiality.

²⁵ Article 3, paragraph 3 of the Convention on the Rights of the Child requires states “to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”. Article 19, paragraph 3 of P.D. 220/2007 also provides that staff working with cases of unaccompanied minors must have had or receive appropriate training concerning their needs.

V. Appendix – Interpretation of the Refugee Convention definition in the context of gender-based claims

In the context of gender-based claims, as with all claims, when considering whether to recognise refugee status it is necessary to consider what constitutes persecution and whether the persecution is caused by one of the grounds referred to in the Convention.

(a) What constitutes persecution on the basis of gender?

- **Acts of sexual violence** can be characterised as serious abuses amounting to persecution²⁶. Rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, domestic violence and trafficking, are acts which are often used as forms of persecution, whether perpetrated by a state or private actors.
- **Laws which violate human rights laws** - Some laws, which may emanate from traditional or cultural norms and practices, may not conform to international human rights standards. Enforcement of such laws in and of itself can amount to persecution.
- **Banned practices being tolerated by the state** – Even in cases where a persecutory practice (e.g. female genital mutilation) has been prohibited by a state, the continuation of that practice amounts to persecution if the state tolerates the practice or is unable to stop the practice effectively.
- **Disproportionately severe punishment** – If a penalty or punishment for non-compliance with a policy or law is disproportionately severe, it will amount to persecution. Common examples of this are the severe punishments for women whose actions go against social mores.
- **Implementation of laws using methods which violate rights** - Implementation of policies under a legitimate law may also amount to persecution, if the methods of implementation are in breach of fundamental human rights, e.g. forced abortions.
- **Cumulative effect of discrimination** - Even though discrimination of itself will not normally amount to persecution, the cumulative effect of a pattern of discrimination or less favourable treatment can amount to persecution, e.g. serious restrictions on the right to earn a livelihood, the right to practise religion, or access to available educational facilities or health services.
- **State's failure to give rights or protection from abuse** - One important form of discrimination may be the state's failure to guarantee protection from serious abuse (such as domestic violence). This discrimination, resulting in serious harm inflicted with impunity, could amount to persecution.
- **Trafficking** - Some trafficked women, or women at risk of being trafficked, may have valid claims to refugee status. The forcible or deceptive recruitment of women for the purposes of forced prostitution or sexual exploitation for instance, is a form of gender-related violence or abuse that can lead to death and can be considered a form of torture and cruel, inhuman or degrading treatment. In addition, trafficked women may face serious repercussions upon return, such as reprisals or retaliation from trafficking rings or individuals, the possibility of being re-trafficked, severe community or family ostracism, or severe discrimination. Being trafficked could therefore be the basis for a refugee claim where the state is unable or unwilling to provide protection against such harm.

Laws violating social norms or abusive practices tolerated by the state cannot be justified on the basis of respect for customary law and cultural diversity. Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women specifically required states to take all appropriate measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which

²⁶ Article 60 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”²⁷.

(b) How are the Convention grounds interpreted in the context of gender-based persecution?

Pursuant to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, states are required to “ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status”²⁸.

- **Race** - Persecution for reasons of race may be expressed in different ways against men and women. For example the persecutor may choose to destroy the ethnic identity of a racial group by killing, maiming or incarcerating men, while women may be viewed as propagating the racial or ethnic identity and persecuted through sexual violence or control of reproduction.
- **Religion** - In some states religion is deemed to assign particular roles or behavioural codes to women and men. Where a woman does not fulfil her assigned role or refuses to abide by the codes, and is punished as a consequence, she may have a claim for persecution on the grounds of religion. Failure to abide by such codes may be perceived as evidence that a woman holds unacceptable religious opinions regardless of what she actually believes. A woman may face harm for her religious beliefs or those attributed to her, including her refusal to hold particular beliefs or to conform her behaviour in accordance with the teachings of a prescribed religion.
- **Nationality** - Although persecution on the grounds of nationality, as with race, is not specific to women or men, in many instances the nature of the persecution takes a gender-specific form, most commonly that of sexual violence directed against women or girls.
- **Membership of a particular social group** - A particular social group is a group of persons who share a common characteristic (other than the risk of being persecuted), which is innate, unchangeable, or is otherwise fundamental to identity, conscience or the exercise of one’s human rights. Women are an example of a social group whose members share innate characteristics that identify them as a group in society, often subjecting them to different treatment and standards.
- **Political opinion** - Political opinion should be understood to incorporate any opinion on any matter in which the government, the machinery of State, society or policy may be engaged. It could include an opinion as to gender roles or practices such as female genital mutilation. A claim on this basis presupposes that the claimant holds or is assumed to hold opinions not tolerated by the authorities and that such opinions have come or could come to the notice of the authorities or are attributed by them to the claimant. It is not always necessary to have expressed such an opinion, or to have already suffered any form of discrimination or persecution. The test of well-founded fear would be based on an assessment of the consequences that a claimant would have to face if she returned. It is important to bear in mind that women are less likely than men to engage in high profile political activity and are more often involved in “low level” political activities that reflect dominant gender roles. For example, a woman may work in nursing sick rebel soldiers, in the recruitment of sympathisers, or in the preparation and dissemination of leaflets. Women are also frequently attributed with political opinions of their family or male relatives and subjected to persecution because of the activities of their male relatives. Equally important is to recognise that a woman may not wish to engage in certain activities, such as providing meals to government soldiers, which may be interpreted as holding a contrary political opinion and lead to persecution.

²⁷ Article 5, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, ratified by Greece through Law 1342/1983.

²⁸ Article 60, paragraph 2.

VII. Sources and useful reference material

(unless otherwise indicated, the material listed below can be found on UNHCR's database, "Refworld", at web address: www.refworld.org. Greek texts can be found at the website of UNHCR's office in Greece www.unhcr.gr)

Protection of Women

UNHCR *Handbook for the Protection of Women and Girls*, January 2008

UNHCR, *Heightened Risk Identification Tool*, June 2010

UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, 2003

Council of Europe *Convention on preventing and combating violence against women and domestic violence*, CM (2011)49 Final, 7 April 2011
[<http://conventions.coe.int/Treaty/EN/Treaties/HTML/DomesticViolence.htm>]

Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979
[<http://www2.ohchr.org/english/law/cedaw.htm>]

UNHCR, *Executive Committee Conclusion on Women and Girls at Risk*, No. 105 (LVII), 2006

UNHCR, *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, February 1999

Refugee Status Determination

UNHCR, *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*, May 2002

UNHCR, *Guidelines On International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, May 2002

UNHCR, *Guidelines On International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, December 2009

UNHCR, *Ensuring Gender Sensitivity in the context of Refugee Status Determination and Resettlement*, modules 1, 2 and 3, Regional Bureau for Europe, October 2005

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992

UNHCR, *Guidance Note On Refugee Claims Relating To Female Genital Mutilation*, May 2009

UNHCR, *Guidelines On International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, April 2006

Protection of girls

Convention on the rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

Separated Children in Europe Programme, Statement of Good Practice, 2009

UNHCR Guidelines on Determining the Best Interests of the Child, 2008

UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997

UNHCR and Greek Ombudsman Guidelines on Unaccompanied Children Seeking Asylum, 2005

Greek Law

Law 3907/2011 on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third-country nationals” and other provisions (especially Articles 20, 25 and 32 regarding unaccompanied minors)

Law 3064/2002 – Combating human trafficking, crimes against sexual freedom, child pornography and generally the financial exploitation of sexual life and support for the victims of such acts

Law 3386/2005 - Entry, residence and social integration of citizens of third countries in the Greek territory

Presidential Decree 114/2010 on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005)

Presidential Decree 220/2007 on the transposition into the Greek legislation of Council Directive 2003/9/EC from January 27, 2003 laying down minimum standards for the reception of asylum seekers (Official Journal of the European Communities L 31/6.2.2003)

Presidential Decree 233/2003 – Protection and assistance to victims of crimes under articles 323, 323A, 349, 351 and 351A of the Penal Code, in accordance with article 12 of Law 3064/2002.