



**Position Paper on
Violence against Women and Girls in the European Union
And Persons of Concern to UNHCR**

This paper focuses on gender-based violence against women and girls of concern to the Office of the United Nations High Commissioner for Refugees (UNHCR) i.e. refugees, asylum-seekers, stateless, and those otherwise potentially in need of international protection.

This paper has been prepared in the context of UNHCR's supervisory responsibility which is set out under its Statute,¹ Article 35 of the 1951 Convention relating to the Status of Refugees (the 1951 Convention), Article II of its 1967 Protocol,² and reflected in European Union (EU) law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (TFEU), as well as in Declaration 17 to the Treaty of Amsterdam, which provides that "*consultations shall be established with the United Nations High Commissioner for Refugees [...] on matters relating to asylum policy*". The TFEU expressly requires EU secondary legislation on asylum to conform to the 1951 Convention,³ and the EU Directive on preventing and combating trafficking in human beings and protecting its victims recites that "*this directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees.*"⁴

UNHCR welcomes the priority given by the Greek Presidency to the issue of violence against women in the EU and the work done towards the adoption of Council Conclusions on this matter.

In this context, UNHCR reiterates its call to the EU institutions to adopt a broad policy framework for tackling gender-based violence against women and girls in the EU, beyond existing targeted actions, providing a comprehensive and human rights-based approach to preventing all forms of violence against women and girls, including persons of concern to UNHCR, and protecting victims.

UNHCR also renews its call on the EU and its Member States to ratify the Council of Europe Convention on preventing and combating violence against women.⁵

¹ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V).

² UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, and UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

³ Article 78 para. 1 TFEU provides that the policy on asylum "must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties".

⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human being and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁵ Council of Europe, Convention on preventing and combating violence against women and domestic violence (CoE Convention), CETS No.: 210.

- **Definition of violence against women and girls**

The UN General Assembly has provided a broad and gender-based definition of violence against women and girls encompassing all forms of violence.⁶ Likewise, the Council of Europe Convention on preventing and combating violence against women and domestic violence provides a similar definition.⁷

UNHCR also highlights the need to make it clear that violence against women covers not only adult women but also girls below 18 years of age. This reflects standards for protection of children under the Convention on the Rights of the Child and the CoE Convention.⁸

- **Persons of Concern to UNHCR and violence against women in the European Union**

While much focus has been given to women's experiences of violence, less has been done on asylum-seeking and refugee women and girls. Forced displacement weakens existing community and family protection mechanisms, and exposes refugee women and girls to the risk of a range of human rights violations, including violence.

Like other women, much of the violence and discrimination experienced by refugee and stateless women and girls takes place in their homes. In addition though, forced displacement and exile bring about changes in gender roles that may lead to new and/or renewed domestic violence in refugee families, and those women and girls whose legal status depends on that of their spouses or fathers/guardians find themselves in a situation of greater vulnerability when facing violence in the family.

⁶ UNGA, Declaration on the Elimination of Violence against Women, 85th Plenary Meeting, 20 December 1993, Geneva (Resolution 48/104) and reiterated in the Beijing Declaration and Platform for Action adopted at the 16th plenary meeting, on 15 September 1995: "The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs [...] Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection."

⁷ CoE Convention, Art. 3 – Definitions: "For the purpose of this Convention:

a. "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b. "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

c. "gender" shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

d. "gender-based violence against women" shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately."

⁸ CoE Convention, Art. 3(f): "'women' includes girls under the age of 18."

In a Dialogue with refugee women in Finland, they raised domestic violence as the single most important issue facing all refugee communities. They told UNHCR about the impact of domestic violence, and the factors which contribute to it, in particular men's feeling of losing their status in exile.⁹

In addition to domestic violence, refugee women and girls may experience more specific and less common forms of gender-based violence, including female genital mutilation, forced marriages or crimes of 'honour' at the hands of their families and/or communities. Likewise, when accommodated in detention facilities or reception centres with limited privacy and close proximity to strangers, these women and girls are at heightened risk of becoming victims of violence at the hands of others accommodated in the same facilities, in particular when they are considered by members of their own communities not to conform with gender norms.

Away from their support networks, and often in crisis situations, women forced to move may be even more vulnerable to various forms of violence by smugglers, detention facility personnel, border guards, police officers, asylum officials, and reception centre staff. These often hold the future of these women and girls in their hands.

In their flight, refugee women and girls often have to rely on smugglers, who may be closely related to traffickers, with both preying on the vulnerabilities of people seeking international protection. In addition trafficked women may be unable to return to their countries of origin for fear of further human rights violations. They may fear re-victimization at the hands of traffickers, risk being re-trafficked, or being stigmatized for their participation in sex work, albeit involuntary, which may amount to persecution.

Likewise, stateless women and girls may find themselves in a situation of heightened vulnerability. Statelessness, by its very nature, severely restricts access to basic identity and to documents that nationals normally possess, including travel documents. In addition, due to a lack of adequate identification and protection mechanisms for stateless persons, stateless women and girls face difficulties regularizing their stay in the EU, making them particularly vulnerable to exploitation and abuse, including trafficking, forced labour and sexual exploitation, or repeat or prolonged detention.

- **Recognizing the specific vulnerabilities of women and girls of concern to UNHCR**

UNHCR notes with satisfaction that the specific vulnerabilities of some groups of women and girls, including those of concern to UNHCR, have been noted in policy and law in Europe.

The Council Conclusion on Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence has called for *"special attention to the interests and difficulties of all women and girls in vulnerable situations and facing multiple discrimination so as to ensure that protection against violence and support for its victims reaches all parts of society, including marginalised groups."*¹⁰

Likewise, the 2014 European Parliament Resolution on violence against women notes that *"due to factors such as race, ethnicity, religion or belief, health, civil status, housing, migration status, age, disability, class, sexual orientation and gender identity, women may*

⁹ UNHCR, *Protectors, Providers, Survivors: A Dialogue with Refugee Women In Finland*, October 2011, p.28.

¹⁰ Council of the European Union, Council conclusions on Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence, 6 December 2012, para. 36.

have special needs and be more vulnerable to multiple discriminations.” The Resolution calls for a strategy that *“should devote particular attention to vulnerable groups such as older persons, people with disabilities, immigrants and LGBT (lesbian, gay, bisexual and transgender) persons.”*¹¹

As for the Directive on the rights of victims of crime, it requires that *“victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable”* be duly considered in the context of an individual assessment.¹²

The EU asylum *acquis* in turn recognizes that acts of sexual violence qualify as acts of persecution and so do acts of a gender- and child-specific nature.¹³ The Recast EU Qualification Directive requires Member States to *“take into account the specific situation of vulnerable persons such as victims of human trafficking, [...] and persons who have been subjected to rape or other serious forms of psychological, physical or sexual violence”* when implementing the provisions relating to the content of international protection.¹⁴ The EU Qualification Directive specifically mentions FGM in its Recital 30. The EU thus has a responsibility to ensure that Article 18 and Article 19 (2) of the European Union Charter of Fundamental Rights are upheld with regards women and girls in need of international protection for because of gender-based violence.

The specific vulnerability of persons who have been subjected to rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, as well as victims of trafficking, is also recognised in the EU Reception Conditions Directive (Recast),¹⁵ which makes an assessment of such vulnerabilities in the asylum reception system mandatory.¹⁶ The Directive also requires Member States to *“take appropriate measures to prevent assault and gender based violence including sexual assault and harassment, within the premises and accommodation centres.”*¹⁷ Annex 1 of the Recast Directive further stipulates that the information Member States are required to submit as part of their reporting requirements includes *“the different steps for the identification of persons with special reception needs, including the moment when it is triggered and its consequences in relation to addressing such needs, in particular for victims of rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking.”*

¹¹ European Parliament, Resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL)), para AA and 5.

¹² Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Directive on the rights of victims of crime), 25 October 2012, Art.22(3).

¹³ Directive 2011/95/EU of the European Parliament and of the Council on 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 (recast) (Recast EU Qualification Directive), 13 December 2011, Art.9(2)(a) and (f).

¹⁴ EU Qualification Directive (Recast), Art.20(3).

¹⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (Recast EU Reception Conditions Directive), Art.21(1).

¹⁶ EU Reception Conditions Directive (Recast), Art.22(1).

¹⁷ EU Reception Conditions Directive (Recast), Art.18(4).

Lastly, the EU Asylum Procedures Directive (Recast) requires that the examination of asylum applications be gender-sensitive. Officials interviewing asylum applicants must be competent to take account of the applicant's vulnerability,¹⁸ and wherever possible, of the same sex as the applicant if requested.¹⁹ The same Directive states that certain applicants may be in need of special procedural guarantees due *i.a.* to their age, gender, sexual orientation, gender identity, or as a consequence of rape or other serious forms of psychological, physical or sexual violence."²⁰

As for the CoE Convention, it has dedicated three articles to the specific situation of migrant and refugee women and girls. Its Explanatory Report states that *"research has shown that fear of deportation or loss of residence status is a very powerful tool used by perpetrators to prevent victims of violence against women and domestic violence from seeking help from authorities or from separating from the perpetrator. The drafters considered it necessary to ensure that the risk of losing their residence status should not constitute an impediment to victims leaving an abusive and violent marriage or relationship."*²¹ In relation to Article 60 on gender-based asylum claims, the Explanatory Report goes on to say that *"asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence have gone unrecognised. [...] There is no doubt that rape and other forms of gender-related violence, such as female genital violence, dowry-related violence, serious domestic violence, or trafficking, are acts which have been used as forms of persecution, whether perpetrated by state or non-state actors."*²² In relation to Article 61, the Explanatory Report further notes that this provision *"entails the obligation under international law for states to respect the principle of non-refoulement in relation to victims of gender-based violence who may fear persecution if returned."*²³

UNHCR therefore encourages the Greek Presidency and Council to ensure that refugee and stateless women and girls are fully included in the Council Conclusions.

- **The way forward**

The European Commission has the responsibility to **monitor the implementation of the European Union asylum acquis**. The European Commission should, in particular, make full use of the reporting requirement under the EU Reception Conditions Directive (Recast) to address the gap in data collection and knowledge on gender-based violence in EU asylum reception systems.

Likewise, the European Asylum Support Office (EASO) whose important role is regulated in EU Regulation 439/2010 could contribute to supporting Member States in establishing **mechanisms for the prevention of and response to gender-based violence in asylum and detention centres**, and sharing existing good practices in this area.²⁴ This would be in line

¹⁸ EU Directive 2013/32/EU of the European Parliament and of The Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (EU Asylum Procedures Directive(Recast)), Art.15(3)(a).

¹⁹ EU Asylum Procedures Directive (Recast), Art.15(3)(b) and (c).

²⁰ EU Asylum Procedures Directive (Recast), Recital 29 and Art.24(3).

²¹ CoE Convention, Explanatory Report, Art. 59. Para. 301 and 302.

²² CoE Convention, Explanatory Report, Art. 60. Para. 310.

²³ CoE Convention, Explanatory Report, Art. 60. Para. 321.

²⁴ UNHCR, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response*, May 2003.

with the requirement under the EU Directive on the rights of victims of crime which requires States to take appropriate action aimed at *inter alia* “raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such victims of gender-based violence. Such action may include information and awareness raising campaigns”.²⁵

The **training** of all officials likely to come into contact with victims of gender-based violence is now a requirement of EU law.²⁶ These officials do include asylum staff in reception centres as well as decision-makers and interviewers. Training should aim, in particular, at avoiding **secondary and repeat victimisation** of survivors of gender-based violence in the asylum system.

To expel or return a girl or woman to a country where she could be subjected to gender-based violence may amount to a breach of state obligations under international human rights law, and specifically a breach of the **principle of non-refoulement**. The European Commission thus has a responsibility to ensure that Article 18 and Article 19 (2) of the European Union Charter of Fundamental Rights are upheld with regards women and girls at risk of gender-based violence.

In the context of the Common European Asylum System (CEAS), the Council has expressed the aim that “similar cases should be treated alike and result in the same outcome.”²⁷ UNHCR welcomes the decision by EASO to develop a **training module** on gender and sexual orientation and to mainstream gender in its existing modules. Efforts must also be allocated to enhance the **gender-sensitive nature of Country of Origin Information (COI)** to support awareness of issues relating to gender-based violence in the countries of origin, and strengthen the capacity of the asylum authorities to adjudicate claims relating to such violence.

Refugee women and girls survivors of sexual and gender-based violence may be in particular need for **resettlement**. To ensure that EU Member States with refugee resettlement programmes make use of the criteria for vulnerable women and systematically include women and girls victims of violence in their annual resettlement quotas, the European Commission should encourage Member States to adopt such quotas, and support them in implementing integration strategies tailored to the specific needs of these vulnerable resettled refugees.

Social, linguistic, religious and cultural barriers may hinder the access of refugee women and girls to assistance and support services. Services for survivors of gender-based violence should therefore also be tailored to reach out to and address the specific needs of refugee and stateless women and girls. More generally speaking, **integration** programmes should further promote the rights of all refugees to live free of gender-based violence in their host communities, and the principle of gender equality in the EU.

In order to enable the **voices of asylum-seeking, refugee and stateless women and girls** to be heard, the European Union should systematically involve women’s associations in consultations on the implementation of the strategy, including on the improvement of

²⁵ Directive on the rights of victims of crime, Art.26(2).

²⁶ Directive on the rights of victims of crime, Art.25 (1).

²⁷ European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ C 115/1, 4 May 2010, section 6.2, Asylum: a common area of protection and solidarity.

reception conditions for women seeking asylum, the exchange of good and promising practices, the design of specific funding, and the awareness raising and education campaign.

Place violence issues, in particular against stateless and displaced women and girls, systematically on the agenda of **EU enlargement discussions** and support these countries in combating violence against women and girls.

The European Union also has a responsibility to uphold its values and fundamental rights by contributing to and complementing the efforts of Member States to ensure the prevention of gender-based violence against women and girls in the European Union. As such, the European Union must foster a **coherent response by European Union institutions, relevant agencies and Member States**, as well as a harmonized approach in the field of asylum.

UNHCR
Bureau for Europe
March 2014