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Gender-related claims for asylum

Report¹

Committee on Migration, Refugees and Population

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Summary

Persecution experienced by women often differs from that experienced by men, but the asylum system still tends to regard it through a lens of male experiences. Gender-related persecution may give rise to claims for international protection. However, states do not always take it into proper account. To this must be added inappropriate interview settings, the use of irrelevant country of origin information and lack of training of officials. Although member states are stepping up their work in order to streamline a gender understanding into public decision-making, policy and operations, this effort is not always reflected in the asylum procedure.

Certain forms of harm (gender-based forms of harm or violence) are more frequently or only used against women or affect women in a manner that is different from men. These include, *inter alia*, sexual violence, societal and legal discrimination, forced prostitution, trafficking of human beings, refusal of access to contraception, bride burning, forced marriage, forced sterilisation, forced abortion and (forced) female genital mutilation and enforced nakedness/sexual humiliation.

A woman may be persecuted because of her gender (gender-related persecution), for example where she refuses or fails to comply with social, religious or cultural behaviour expected from a woman (floggings for refusing to use a veil, female genital mutilation, honour killings of adulterous women, etc.)

The Parliamentary Assembly is invited to call upon member states to ensure that gender-based violence and gender-related persecution is appropriately taken into account in any asylum determination process. They are also called upon to set up their asylum system in such a way as to ensure gender sensitivity. The Assembly also calls on the Committee of Ministers to, *inter alia*, instruct the appropriate inter-governmental body in the Council of Europe to carry out a study on the approach of member states to gender-related claims in the asylum process and provide them with guidelines.

¹ Reference to committee: Doc. 11679, Reference 3484 of 29 September 2008.

A. Draft resolution²

1. Fifty-two per cent of all refugees in Europe are women or girls. Many women and girls seek asylum due to persecution that is specific to their being female. These persons deserve to be treated in a way that recognises their particular needs and any persecution and violence they may have faced linked to their gender.
2. Gender-related persecution where the victims are persecuted because they are women and gender-based violence such as rape, can give rise to international protection claims. According to NGOs and international organisations, states do not always take into account the gender dimension when assessing asylum applications. Persecution experienced by women and girls often differs from that experienced by men, but the asylum system still tends to regard it through a lens of male experiences.
3. Women and girls may face different forms of harm, gender-related persecution and gender-based violence. These may include sexual exploitation, forced marriage, honour crimes, forced abortion, forced pregnancy and forced sterilisation. During armed conflict, women and girls may be subjected to physical, sexual and psychological violence, including rape. Two other forms of harm that women and girls in particular may face include female genital mutilation and trafficking in human beings. They may also be victims of so-called honour crimes. The perpetrators of gender-based forms of violence (or harm) can be non-state as well as state actors.
4. Individuals who are gay, lesbian, bisexual or transgender also face particular forms of gender-related persecution and gender-based violence and often have to hide their sexual orientation or risk being harassed, or in extreme cases being beaten and even killed.
5. The Parliamentary Assembly has previously addressed different forms of gender-based violence, in particular in its Resolution 1635 (2008) on combating violence against women: towards a Council of Europe Convention and Resolution 1662 (2009) on action to combat gender-based human rights violations, including abduction of women and girls. Although many member states are stepping up their work in order to streamline a gender understanding into public decision-making, policy and operations, this understanding does not always translate into the asylum process.
6. In addition to the problem of gender issues not being properly taken into account in the asylum determination assessment, the asylum procedure in member states often makes it difficult for women to bring across their full story. A woman who faces a male interviewer or interpreter can be reluctant to speak freely and give a full account of the violence she has experienced, whether gender-based or not. Moreover, the officials involved in the asylum procedure often lack adequate training on gender issues and therefore fail to ask the right questions or to analyse the evidence before them properly. This problem may be exacerbated by the use of country of origin information that ignores gender issues or has little gender relevance. Furthermore, the social situation of a woman in the asylum process may also mitigate against her, whether in terms of her situation in detention or her situation in society in the host country, where she may continue to face forms of discrimination and even violence.
7. The Assembly recalls the recommendations set out in its Resolution 1695 (2009) on improving the quality and consistency of asylum decisions in the Council of Europe member states. It also recalls its Resolution 1662 (2009) and emphasises the relevance of these in tackling the issue of gender-based violence and gender-based persecution in asylum claims.
8. Women and girls seeking asylum in Council of Europe member states have the right to have their protection claims determined by an asylum system that is informed and sensitive in all aspects of its policy and operations to the particular forms of persecution and human rights abuses that women face in the light of their gender. Therefore, the Assembly calls on member states to:
 - 8.1. ensure that gender-based violence is taken into account under the five different grounds of persecution (race, religion, nationality, membership of a particular social group or political opinion) in any asylum determination process and that “gender” is specifically included as a “social group”, preferably by law, or at least in practice;
 - 8.2. take into account that not only women and girls face gender-based violence and gender-related persecution, but that men and boys may also face such violence and persecution;

² Draft resolution adopted unanimously by the committee on 24 June 2010.

8.3. take into account that gay, lesbian, bisexual or transgender persons are increasingly facing gender-based violence and gender-related persecution.

9. In order to ensure that asylum procedures are sufficiently sensitive to gender-related claims, the Assembly further recommends that member states:

9.1. identify women and girls that may have faced gender-based violence and gender-related persecution as early in the process as possible, and where appropriate ensure that they are registered in their individual capacity in order to remain independent of their husbands or male relatives when pursuing their applications;

9.2. ensure that women who might suffer trauma due to gender-based or other forms of violence are given sufficient time to reflect and recuperate before the asylum procedure is initiated, if necessary on the basis of a special temporary residence permit, which should however not preclude or replace the subsequent long-term residence permit that could be granted once refugee status has been established;

9.3. ensure that women are automatically provided assistance and interpretation by female counsellors and interpreters when formulating their asylum claims and filling out their applications;

9.4. ensure that women fill out their asylum application by themselves and that this is not done for them by husbands or other relatives;

9.5. guarantee that interviewers and interpreters dealing with female asylum seekers are automatically women. If for any reason this is not possible, the female asylum seeker should be informed of the right to have a woman interviewer or interpreter;

9.6. that the asylum interview is carried out in a gender-sensitive way and, in particular, that questions relevant to gender-based violence and gender-related persecution are asked;

9.7. women are not hindered from accessing asylum procedures by lack of child care opportunities or problems in queuing and obtaining appointments for their asylum claims, etc.

10. In order to ensure that the decision process is sufficiently sensitive to gender-related asylum claims, the Assembly also recommends that member states:

10.1. ensure that country of origin information is up to date on gender-based violence and gender-related persecution issues;

10.2. ensure that the asylum determination is carried out by an official who has received adequate training with a view to properly detecting the occurrence of gender-based violence and gender-related persecution that may give right to refugee or other status;

10.3. take fully into consideration that the majority of gender-based violence and gender-related persecution is inflicted by private actors, but that the state retains the responsibility to protect victims, whether or not it is able to do so;

10.4. take into account that a woman who has chosen not to avail herself of the protection of the state from which she is fleeing might have done so for fear of retaliation and further abuse (for example by male relatives), and that this fact shall not prejudice her claim for refugee status;

10.5. restrict the use of internal flight alternatives for asylum seekers who invoke gender-related claims, taking carefully into account the availability of state protection in the area of relocation and the safety of the route;

10.6. examine at the same time claims for asylum and complementary forms of international protection and award the relevant protection according to established criteria.

11. The Assembly considers that, in the asylum process, member states should, in particular, take into account the special problems faced by:

11.1. victims of trafficking, notably women and girls, and in this respect:

11.1.1. ensure that trafficking in human beings, in particular for sexual exploitation, is considered as a form of persecution on which a claim for asylum can be based;

11.1.2. collaboration of the woman or girl concerned with the police, prosecutor or judiciary should not be a precondition for the granting of asylum or other complementary form of international protection;

11.2. victims or potential victims of female genital mutilation, and in this respect ensure that:

11.2.1. female genital mutilation and the risk of female genital mutilation is recognised as a potential ground for an asylum claim;

11.2.2. a well-founded fear of female genital mutilation is taken into account concerning a daughter born post-flight, even when the parents have been in the country of asylum for some time.

12. Bearing in mind the particular vulnerability of female asylum seekers in relation to their social and legal situation before, during and after the asylum process, member states should ensure that:

12.1. the physical safety of asylum-seeking women and girls is guaranteed, in particular if they are provided with collective accommodation or held in detention;

12.2. female asylum seekers are provided with work permits to allow them independence and to avoid them becoming more vulnerable and targets for exploitation;

13. In order for member states to ensure that gender-based violence and gender-related persecution is adequately taken into account in the asylum process, the Assembly urges member states to:

13.1. render their asylum systems and asylum procedures gender-sensitive, including by providing compulsory training to officials;

13.2. undertake a gender-impact assessment of all current and proposed asylum policies and procedures and make adjustments to address discriminatory or negative impacts due to gender;

13.3. collect and analyse statistics with regard to gender-based violence and gender-related persecution in asylum claims;

13.4. ensure that all asylum statistics are sex-disaggregated;

13.5. publish national asylum precedents concerning gender-based violence and gender-related persecution as a means of raising awareness and ensuring greater quality and consistency in European asylum systems.

14. The Assembly recommends that member states take all necessary measures to tackle the roots of gender-based violence and gender-related persecution, both within their own borders and also in countries of origin.

B. Draft recommendation³

1. Referring to its Resolution ... (2010) on gender-related claims for asylum, the Parliamentary Assembly draws attention to the situation in Council of Europe member states of women and girls who may have faced different forms of gender-based violence or gender-related persecution, such as female genital mutilation, trafficking in human beings, so called "honour crimes" or sexual violence as a means of warfare.

2. The Committee of Ministers is invited to take note of the Assembly's recommendations to member states set out in the above-mentioned resolution and to encourage member states to comply with it.

3. The Assembly considers that much greater efforts should be made to examine the extent to which member states take due account of gender-based violence and gender-related persecution in their asylum systems, beginning with the collection, analysis and publication of statistics and information on the issue. The Assembly therefore invites the Committee of Ministers to:

3.1. instruct the appropriate inter-governmental body in the Council of Europe to carry out a study on:

3.1.1. the legal and procedural approach of member states to gender-based violence and gender-related persecution in the asylum process;

3.1.2. the way in which member states cater for the particular needs of victims of gender-based violence and gender-related persecution in the asylum process, for example by providing same-sex interviewers and interpreters who are trained to be gender-sensitive;

3.1.3. the comparative recognition rates for refugee status and grants of complementary forms of international protection on gender-related claims;

3.1.4. the social situation and legal status of asylum seekers who claim to be victims of gender-based violence and gender-related persecution before, during and after the asylum procedure;

3.2. initiate a set of guidelines, based on the above-mentioned study, to ensure that gender-based violence and gender-related persecution is adequately taken into account in national asylum processes and in the asylum curriculum of member states;

3.3. develop gender-sensitive training programmes and tools for those involved in asylum procedures, notably in the areas of interview techniques, finding and using country of origin information, developments in international human rights and refugee law, and drafting of decisions.

³ Draft recommendation adopted unanimously by the committee on 24 June 2010.

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1. Introduction

1. Fifty-two per cent of all refugees in Europe are women or girls. Women seek asylum from the same forms of persecution as men. In addition, women are also victims of persecution for reasons that are specific to their being women. Even if the reasons for the persecution happens to be the same as for a man, it may manifest itself differently when the victim is a woman. The same applies for individuals who are gay, lesbian, bisexual or transgender (LGBT). Although the term “gender” covers LGBT persons, the rapporteur has opted to limit the examination of gender-related claims of this group to a short section (Section 7). The reason for this is that he believes the subject of sexual orientation-related claims merits an Assembly report in its own right.

2. The perpetrators of gender specific violence (or harm) can be state or non-state actors, including relatives. During armed conflict in particular, women are submitted to all forms of physical, sexual and psychological violence, including rape, sexual exploitation, forced marriage, forced abortion, forced pregnancy and forced sterilisation. Systematic rape and sexual violence against women can be an instrument in “ethnic cleansing” campaigns. Gender-specific violence does not only occur during periods of conflict. Two further forms of gender-based violence are female genital mutilation and trafficking.

3. When assessing asylum applications, it is recommended that states take into account the gender dimension. Violence which is gender related may amount to persecution in the sense of the 1951 Geneva Convention relating to the Status of Refugees (“the 1951 Geneva Convention”) in no lesser degree than violence which occurs without regard to the sex of the victim. According to NGOs and international organisations, member states do not always take this into account.

4. It is not only in the legal assessment of whether there is gender-related persecution or gender-specific violence amounting to persecution that states often fail to give proper weight to gender. Women also have additional hurdles to overcome in the asylum procedure. The interview situation is often gender insensitive. If the setting of the interview and the approach of the interviewer is gender insensitive, there is a risk that a female asylum seeker may feel uncomfortable or threatened. This might prevent her from correctly putting forward her story and relevant circumstances. If the interviewer is gender insensitive, or uses non-relevant

country of origin information, the wrong questions may be asked and an incorrect analysis may be made of the answers. Even if states properly take gender-related issues into account in the legal assessment of the asylum claim, these other flaws, such as the setting up of the interview, may undermine the quality of the asylum information obtained and the whole basis on which the asylum decision is taken.

5. Asylum seekers and refugees are vulnerable in their host country. Female asylum seekers and refugees are even more vulnerable. They may face discrimination because they are aliens or on the basis of their ethnicity or simply because they are women. They may continue to face violence in their community, even in their new host country or amongst their family members or relatives. They may fear expulsion if they complain to the authorities and have a number of other problems in obtaining legal protection. They may also face particular problems due to their gender in reception and detention centres.

6. The present report enters into the framework of a set of adopted and forthcoming reports prepared by the committee with the objective of improving the quality and consistency of asylum systems in Council of Europe member states, as well as the situation of individual asylum seekers and irregular migrants. This set of reports includes the already adopted reports on “Improving the quality and consistency of asylum decisions in Council of Europe member states” (rapporteur: Boriss Cilevičs, Latvia, Socialist Group),⁴ “The detention of asylum seekers and irregular migrants in Europe” (rapporteur: Ana Mendonça, Portugal, Socialist Group)⁵ and the forthcoming report on “Unaccompanied minors in Europe: Issues of arrival, stay and return” (rapporteur: Mailis Reps, Estonia, Alliance of Liberals and Democrats for Europe).

7. As part of the preparation of the present report, the rapporteur conducted a fact-finding mission to Geneva on 9 April 2010 where he met with representatives of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the International Committee of the Red Cross (ICRC), the United Nations Office for the High Commissioner for Human Rights (UNHCHR) and the World Organisation Against Torture. The rapporteur would like to extend his gratitude to them for the valuable information provided. He would also like to thank the participants and experts in the Conference on “Migrant and violence against women in Europe” which took place in Paris on 10-11 December 2009 and which was organised jointly by the Parliamentary Assembly’s Committee on Migration, Refugees and Population and Committee on Equal Opportunities for Women and Men and the Inter-Parliamentary Union (IPU).

2. Objective, structure and scope of the report

8. In the report, the rapporteur intends to outline the problematic issues, explain the legal framework and propose some measures that European countries could take in order to step up the protection offered to victims of gender-specific violence and gender-related persecution. This work must address not only the legal assessment of a protection claim, but also the interview situation and the general situation of asylum-seeking women and girls before, during and after the asylum decision.

9. The structure of the report will thus be the following:

- (1) The legal assessment. The obligation of states to give proper weight to gender-based violence and gender-related persecution in the legal assessment leading up to an asylum decision;
- (2) The asylum determination procedure. States should organise interviews with female asylum seekers in a way that respects their gender and allows them to tell their story openly. The interviewer, who should be a woman, should be trained to ask the right gender-relevant questions. Country of origin information should be gender relevant. Women should remain independent with regard to the asylum process and have unimpeded access to the asylum process and to legal remedies;
- (3) The social situation of female asylum seekers. Women and girls should be protected from abuse that can occur due to their increased social vulnerability as victims of violence. Female asylum seekers are particularly vulnerable in places where they are deprived of their liberty and in collective accommodation.

⁴ Doc. 11990, Recommendation 1889 (2009) and Resolution 1695 (2009).

⁵ Doc. 12105, Recommendation 1900 (2010) and Resolution 1707 (2010).

10. Statistics concerning gender elements of asylum claims in the Council of Europe member states are hard, if not impossible, to come by. This fact is reflected in the present report. One of the recommendations that the rapporteur would like to make is that states should pay greater attention to collecting and analysing statistics on gender-specific violence and gender-related persecution and publish the results.

11. A few particularly important documents deserve to be mentioned. The organisation Asylum Aid in the United Kingdom has prepared a document called "The rights of women seeking asylum: a charter". The European Council for Refugees and Exiles (ECRE) has published a report concerning many of the issues raised in the present report, including a set of recommendations. UNHCR has published a set of guidelines on the legal assessment of asylum claims of gender-based violence.

3. What are gender-based violence (or harm) and gender-related persecution?

12. "Gender" is not the same as "sex", which is biologically defined. The term "gender" relates to what it means to be a woman or a man. Gender refers to the relationship between men and women based on socially constructed and defined identities, status, roles and responsibilities. Gender differences are affected by the power relations between women and men in a particular society and the implications of these relations for the identity, status, roles and responsibilities of women and men.⁶

13. The first article of the United Nations Declaration on the Elimination of Violence Against Women (1993) provides the following definition of gender-specific – or based – violence: "Any act of 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 deprivations of liberty, whether occurring in public or private life."

14. Certain forms of harm are more frequently or only used against women or affect women in a manner that is different from men. These include, but are not limited to sexual violence, societal and legal discrimination, forced prostitution, trafficking, refusal of access to contraception, bride burning, forced marriage, forced sterilisation, forced abortion, (forced) female genital mutilation, and enforced nakedness/sexual humiliation. These are therefore the prominent types of violence or harm one needs to look at in examining gender-specific violence in asylum claims.

15. Gender-related persecution (or gender persecution) relates to the causal relationship between the persecution and the reason for the persecution. Where it occurs, a woman may be persecuted because of her gender (for example, where she is persecuted because she refuses or fails to comply with social/religious/cultural behaviour expected from a woman). Gender-related persecution is not necessarily the same as persecution on the basis of biological sex. It does not simply refer to persons being persecuted because they are biologically male or female, but to them being persecuted because they fail or refuse to comply with the social requirements of being a man or a woman.

16. It is therefore important to note that an asylum seeker may be persecuted in a gender-specific manner for reasons unrelated to gender (for example, raped because of her membership of a political party), she may be persecuted in a non-gender specific manner, but because of her gender (for example, flogged for refusing to wear a veil), and persecuted in a gender specific manner and because of her gender (female genital mutilation or the honour killing of an adulterous woman).⁷

17. As has been pointed out by ECRE, the persecution of women may be different, both in terms of its form (gender-specific violence) and its motivation (gender-related persecution), from that experienced by men. Women may be targeted because they are community organisers or because they persist in demanding that their rights are respected. Other women are targeted because they are vulnerable – young women who can easily be sexually abused or mothers who will do anything to protect their children. Women have a reproductive role and may be viewed as the embodiment of the identity and future survival of a given ethnic group. Therefore, any case of violence against a woman may also represent an attack on her ethnic group. In many parts of the world, women who do not live according to the standards imposed on them by society can suffer cruel treatment. Refusing arranged marriages, having sexual relations outside marriage, failing to provide a satisfactory dowry or wearing certain forms of dress can result in persecution. Due to social and economic constraints, relatively few of these women manage to flee to other countries for protection, yet when they do, their experiences tend to be interpreted as discriminatory rather than persecutory.⁸

⁶ Asylum Policy Instruction on gender issues in the asylum claim, United Kingdom Home Office 2009.

⁷ Immigration Appellate Authority in the United Kingdom, Asylum Gender Guidelines, November 2000.

⁸ ECRE, Position on asylum seeking and refugee women, December 1997.

4. Gender-based asylum claims

4.1. *The legal assessment*

18. In order to be granted refugee status, according to Article 1A of the 1951 Geneva Convention, the asylum seeker must be able to show that he or she has a well-founded fear of being persecuted upon return for reasons of race, religion, nationality, membership of a particular social group or political opinion and that for this reason he or she is unable to return home. A woman's refugee status might be recognised on any of the above five grounds.

19. There is no definition of "persecution" in the 1951 Geneva Convention. The UNHCR Handbook states that it may be inferred from Article 33 of the 1951 Convention that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution.

4.2. *Persecution by state actors*

20. Gender-specific violence or gender-related persecution can be inflicted by the authorities in the country of origin. In some cases the reason might be that the woman has acted in a manner that is considered inappropriate or simply because she is refusing to submit to gender-discriminatory norms, leading to severe punishment. The political opinions of male relatives are often attributed to women, who may be subjected to persecution as a result.

4.3. *Persecution by non-state actors*

21. Gender-specific violence or gender-related persecution can also be inflicted by non-state actors in the country of origin, including by relatives. Where a state facilitates, condones, conditions, excuses or tolerates violence against women carried out by private actors, the state bears the responsibility. The state is responsible for persecution in cases where it is *able but unwilling* to provide protection, where it implements laws or practices that are discriminatory against women and lead to persecution, where law is administered through persecutory means, or where the penalty for non-compliance with law or policy is disproportionately severe.

4.4. *Internal flight alternative*

22. In examining an asylum claim, states will often look to see if there is an internal flight or relocation alternative available for the asylum seeker. Internal flight or relocation alternatives are not, however, gender neutral. Gender-specific violence or gender-related persecution is often perpetrated by private actors. The lack of effective state protection in one part of the country is an indication that the state will also not be able or willing to protect the girl or woman in another part of the country. The UNHCR declares that "Relocation is not relevant if the applicant would again be exposed to a risk of being persecuted in a new location, whether in its original or any new form of persecution or serious harm. It is important to consider that, due to her age, gender and other factors, the applicant may face discrimination of various kinds and be at heightened risk of abuse, violence and deprivation of other basic human rights".⁹

4.5. *Refugee status or complementary protection*

23. In terms of refugee status or complementary/subsidiary status, the former should be granted to applicants whose claims fall within the 1951 Geneva Convention and the latter should be granted to those whose claims do not fall within the 1951 Geneva Convention but who do merit protection as a result of international human rights law, European Union law or the practice of individual member states. The acceptance proportion between these two types of protection differs widely between Council of Europe member states. Those persons obtaining complementary protection normally obtain fewer rights and less security than those receiving refugee status. When looking at the statistics published by the UNHCR, in France in 2007, of all persons granted protection, 91% were granted refugee status and 9% complementary protection. In other countries the proportion of applicants afforded refugee status as opposed to complementary protection were: Germany, 91%; United Kingdom, 77%; Switzerland, 36%; Norway, 24%; Sweden, 7%, Malta, 1% and the Netherlands, 12%. One can conclude that there is one set of countries that prioritise refugee protection, *inter alia* France, Germany and the United Kingdom, and another set that finds it more justified to grant complementary protection, represented most prominently by Sweden, Malta and the Netherlands.

⁹ UNHCR, Guidelines on International Protection No. 4: Internal flight or relocation alternative within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 2003, paragraphs 18-21.

24. As regards protection due to risks of female genital mutilation, there are reports that states have begun to prefer complementary protection to refugee status when it comes to such asylum claims. It is important that member states generally do not begin to slide towards prioritising complementary protection, with fewer rights and less security, as a matter of convenience rather than as a matter of law. It is particularly important that states do not choose to grant complementary protection automatically for women or individuals who are lesbian, gay, bisexual or transgender (LGBT). These asylum seekers are not second-rate asylum seekers; their claims are as valid as those of any other claimant. The rapporteur recommends that member states should survey this development and publish relevant gender-disaggregated statistics, which have until now been lacking. He also recommends that member states make the assessment of refugee status and eligibility for complementary protection by reference to legal factors, and not convenience of political factors. Refugee status is defined by international law and this cannot be circumvented by national law or practice.

5. Legal instruments

25. The most important international legal instrument in the context of asylum and gender-based violence is the *1951 Geneva Convention* and its refugee definition set out in Article 1A, discussed above, and the prohibition against refoulement in Article 33.

26. The European Convention on Human Rights (ECHR) also enters into play when it comes to the protection of asylum seekers and migrants. There are cases where the persons concerned are not offered refugee protection, but where it is nevertheless impermissible under the ECHR to expel the person. In such a case, the obligation by the member state not to return the individual is solely based on a risk of treatment contrary to the rights enshrined in the ECHR, without the necessity for the treatment to be on the basis of one of the five Refugee Convention grounds. Article 14 of the ECHR protects women against discrimination with regard to the exercise of their rights as set out in the Convention. Protocol No. 12 to the Convention protects women against discrimination that is not necessarily related to a violation of one of the other articles of the Convention (which is required by Article 14 of the Convention addressing discrimination). According to Article 1 of the ECHR, Parties to the Convention undertake to guarantee the rights set out in the Convention to everyone within their jurisdiction, that is also to asylum seekers who might risk expulsion or who are discriminated against.

27. The European Union Qualification Directive applies to European Union member states.¹⁰ According to Article 9(2) of the Directive, acts of persecution can consist in acts of a gender-specific nature.

6. Forms of gender-based violence and gender-related persecution

6.1. Violence against women as a means of warfare

28. One particular case of gender-specific violence is violence against women as a means of warfare. In its Resolution 1670 (2009) on sexual violence against women in armed conflict, the Assembly states that sexual violence against women in armed conflict is a crime against humanity, a war crime, and an unacceptable, but unfortunately effective weapon of war. Raping, sexually assaulting and mutilating, forcibly impregnating and infecting with HIV/AIDS the wives, daughters and mothers of the “enemy” have terrible physical and psychological effects on the victims and can also disrupt or destroy whole communities.

29. In 2008, through the United Nations Security Council Resolution 1820 on women, peace and security, the international community recognised that rape and other forms of sexual violence can constitute a war crime, a crime against humanity and a constitutive act with respect to genocide. However, sexual violence against women in armed conflict is still common. It was a constitutive feature of the Balkan wars and today occurs in the Democratic Republic of Congo and in Sudan where thousands of victims are furthermore denied access to justice, reparation and redress. The lives of the victims remain blighted in many ways while the perpetrators enjoy almost complete impunity for their crimes. In the Democratic Republic of Congo rape has continued after the end of the war.

¹⁰ Council Directive (2004/83/EC) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal of the European Union 2004 L 304/12.

6.2. *Trafficking*

30. Trafficking in human beings is a major problem in Europe today. Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes, whether in their own countries or abroad. Forms of trafficking include sexual exploitation, forced labour and slavery and can concern boys and men as well as girls and women. Traffickers can be criminal organisations, family members or government, rebel or even international forces. Trafficking is a grave human rights violation.

31. In Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), trafficking is defined as follows:

“Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

32. Recognition of refugee status could be an important component of the protection response for certain trafficking victims. While being a victim of human trafficking normally does not suffice to establish a valid claim for refugee status, this does not exclude that, under specific circumstances, trafficked persons may be in need of international refugee protection. This could be the case, for instance, if the trafficking victims fear repercussions against themselves or against their families or communities by the perpetrators, which would amount to persecution for one of the reasons, contained in the 1951 Geneva Convention definition and when there is no effective national protection available should they be returned.¹¹

33. Whereas trafficking can form the basis of a claim for asylum, according to the International Organization for Migration (IOM), other forms of persecution often take precedence and trafficking is neglected. Authorities are allegedly afraid of setting a precedent by basing their decisions on the subject of trafficking.

34. In some countries, co-operation with the police and the prosecutor is a necessary condition for trafficking to be taken into account in an asylum claim. UNHCR recommends that refugee protection be considered separately from witness or victim protection under criminal law, as not all victims of trafficking will be selected by investigating and prosecuting authorities to act as witnesses in criminal proceedings, a fact that has no bearing on their actual protection needs. The rapporteur supports the UNHCR’s recommendation in this respect. Furthermore, many witness and victim protection programmes are temporary in nature. A positive example to the contrary is Canada, where victims of trafficking are not required to testify against their trafficker to gain temporary or permanent resident status.

6.3. *Female genital mutilation*

35. Amnesty International estimates that over 130 million women worldwide have been affected by some form of female genital mutilation (FGM), with over 3 million girls at risk of undergoing FGM every year. FGM is mainly practised in 28 African countries. It is common in a band that stretches from Senegal in West Africa to Ethiopia on the east coast, as well as from Egypt in the north to Tanzania in the South. It is also practiced by some groups in the Arabian peninsula. The countries where FGM is most prevalent are Egypt, followed by Sudan, Ethiopia and Mali. Many girls that are citizens of or live in European countries are lured to Africa every year in order to be submitted to FGM.

36. FGM is inflicted on girls and women because they are female, to assert power over them and to control their sexuality. The practice often forms part of a wider pattern of discrimination against girls and women in society. Following efforts over the past decades to eliminate FGM at the international and national level, rates of FGM have decreased in some areas. Women and girls will nevertheless continue to need international protection as long as the authorities in their own countries are unable or unwilling to provide effective protection.

¹¹ UNHCR, Considerations on the issue of human trafficking from the perspective of international refugee law and UNHCR’s mandate, March 2009, paragraph 19.

37. FGM violates a number of human rights of girls and women, including the right not to be exposed to torture and inhuman or degrading treatment as guaranteed by Article 3 of the ECHR.¹² UNHCR considers FGM to be a form of gender-specific violence that inflicts severe harm, both mental and physical, and which reaches the level of severity amounting to persecution in the sense of the 1951 Geneva Convention. UNHCR has concluded that a woman seeking asylum because she has been compelled to undergo, or is likely to be subjected to FGM, can qualify for refugee status. Under certain circumstances, a parent could also establish a well-founded fear of persecution in connection with the exposure of his or her child to the risk of FGM.¹³

38. Most, if not all countries of origin have legislation in place that prohibits FGM and even take measures to implement these laws. In many countries, however, the legislation remains ineffective and very few perpetrators are punished. Under these circumstances, knowing that the act of FGM is most often committed by private actors, the state cannot be considered able or even willing to offer the protection on which an asylum seeker should be expected to rely. UNHCR states that “For protection to be considered available, States must display active and genuine efforts to eliminate FGM, including appropriate prevention activities as well as systematic and actual (not merely threatened) prosecutions and punishment for FGM-related crimes”.¹⁴

39. It is by now widely recognised by states that the fear of a girl or a woman being subjected to FGM may be for reasons of “membership of a particular social group”, but also of “political opinion” and of “religion” as defined in Article 1A of the 1951 Geneva Convention. Where a woman or a girl does not behave, or is perceived as not behaving in accordance with the interpretation of a particular religion, such as by refusing to undergo FGM or to have FGM performed on her children, she may have a well-founded fear of being persecuted for reasons of religion.

40. UNHCR points out that when assessing a child’s claim for asylum, it is important to remember that actions or threats that might not qualify as persecution in the case of an adult may suffice in the case of a child. In most cases, however, the potential or actual harm caused by FGM is so serious that it must be considered to qualify as persecution, regardless of the age of the claimant.

41. Furthermore, it can happen that a girl is unwilling or unable to express a fear of FGM. A very young girl could well be unaware of or not fully understand the harm that FGM carries with it. In certain situations, adolescent girls could even claim to be looking forward to undergoing FGM, as it also entails receiving attention and gifts and is a sign of growing up. Well-founded fear can nevertheless be considered established since, objectively, FGM is clearly considered as a form of violence amounting to persecution. It is up to the decision-maker to make an objective assessment of the risk facing the child, regardless of the absence of an expression of fear. Even when the parents have been in the country of asylum for some time, a well-founded fear on behalf of the child can arise upon the birth of a daughter post-flight.

42. According to UNHCR, FGM-related claims not only involve the threat of being subjected to the practice, but can also cover women or girls who have already been subjected to the practice and suffer its long-term consequences. There is no requirement that the feared persecution should take an identical form to the one previously endured, as long as it can be linked to one of the grounds in the 1951 Geneva Convention. Even if the mutilation is considered to be a one-off past experience, there may still be compelling reasons arising from that past persecution to grant the claimant refugee status, for example if the persecution suffered was particularly atrocious, and the woman or girl is experiencing traumatic psychological effects, rendering a return to the country of origin intolerable.

6.4. “Honour crimes”

43. All forms of violence against women and girls in the name of traditional codes of honour are considered to be so-called honour crimes and constitute a serious violation of human rights. The issue has been addressed generally in Assembly Resolution 1681 (2009) on the urgent need to combat so-called “honour crimes”. The risk of being submitted to “honour crimes” should be taken into account in gender-related claims.

¹² European Court of Human Rights, *Emily Collins and Ashley Akaziebie v. Sweden*, Application No. 23944/05, judgment of 8 March 2007. See also Human Rights Council, Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, 15 January 2008, United Nations document A/HRC/7/3.

¹³ UNHCR Guidance note on refugee claims relating to female genital mutilation, May 2009.

¹⁴ *Ibid.*, paragraph 21.

44. “Honour crimes” comprise many types of crimes. Any form of violence against women and girls, in the name of traditional codes of honour, is regarded as an “honour crime”. What distinguishes this form of violence from other forms of violence against women therefore resides in the fact that it is exercised in the name of traditional codes of honour. Where the “honour” of the family is at stake, according to the family, and the woman suffers the consequences, one can speak of an “honour crime”.

45. “Honour crimes” have been defined as follows: “Crimes of ‘honour’ are seen to encompass a variety of manifestations of violence against women, including ‘honour killings’, assault, confinement or imprisonment, and interference with choice in marriage, where the publicly articulated ‘justification’ is attributed to a social order claimed to require the preservation of a concept of ‘honour’ vested in male (family and/or conjugal) control over women and specifically women’s sexual conduct, actual suspected or potential”. Murder is the most extreme form of “honour crime”.¹⁵

7. Gender-based violence due to sexual orientation

46. “Sexual orientation” refers to a person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender.¹⁶ The rapporteur would in this context like to draw attention to Assembly Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity.¹⁷ The rapporteur finds that the topic of asylum matters and gender-based persecution of gay, lesbian, bisexual or transgender persons merits a report in its own right by the Assembly.

47. Individuals who are LGBT may be subjected by the authorities or by private actors, including their families, to physical abuse and to discrimination, because of who they are or who the community perceives them to be. This might result from cultural and social norms, leading to intolerance and prejudice, or because of national laws reflecting such attitudes. Where acts of abuse and discrimination go unpunished or where LGBT orientation is criminalised, LGBT individuals may successfully lay a claim for asylum under the 1951 Geneva Convention.¹⁸

48. Claims relating to sexual orientation and gender identity are primarily recognised under the 1951 Geneva Convention on grounds of membership of a particular social group, but may also be linked to political opinion and religion. According to UNCHR, this has been affirmed by courts and tribunals in various jurisdictions, including Australia, Canada, France, Germany, New Zealand, Sweden, the United Kingdom and the United States.¹⁹

49. A common element in the experience of many LGBT applicants is having to keep parts of their lives secret in response to pressure, hostility and discrimination, or criminal sanctions. As a result, they often have limited evidence to establish their LGBT identity or may not be able to put forward evidence of past persecution, in particular where they were not living openly as LGBT in the country of origin.

50. Claims made by LGBT persons often reveal exposure to physical and sexual violence, extended periods of detention, medical abuse, threat of execution and “honour killings”. These acts of harm and mistreatment are so serious that they generally reach the threshold of persecution within the meaning of the 1951 Geneva Convention. Severe forms of family and community violence, rape and other forms of sexual assault, particularly if occurring in detention settings, would fall within the definition of torture. LGBT persons could also experience lesser forms of physical and psychological harm, including harassment, threats of harm, intimidation, and psychological violence that can rise to the level of persecution.

51. While the violence and human rights abuses faced by LGBT persons have many common elements, it is also necessary to distinguish between them. Lesbian women often experience harm as a result of the inter-relation of their sexual orientation and gender, since women’s position in society is generally less

¹⁵ *“Honour: Crimes, Paradigms and Violence against Women”*, Lynn Welchman and Sara Hossain, Zed Books, London, 2005.

¹⁶ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, March 2007.

¹⁷ For an overview of jurisprudence and doctrine relating to the rights of LGBT persons, including human rights violations on grounds of sexual orientation, see International Commission of Jurists (ICJ), *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, 3rd updated edition, 2007.

¹⁸ UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008, paragraphs 3-4.

¹⁹ *Ibid.*, paragraph 8.

powerful than that of men. In societies where women are regarded primarily as wives and mothers, lesbians may be isolated. They often have less access to informal protection systems.

52. Transgender persons, as an even smaller group, will often have distinct experiences of persecution. These could, for example, relate to health care or be due to an increased risk of exposure to harm if their gender identity is not legally recognised. Such exposure could be prompted where a transgender individual is asked by the authorities to produce identity documents and his or her physical appearance does not correspond to the sex indicated in the documents. Someone who is seeking to change or has changed his or her sex may particularly be perceived as challenging prevailing conceptions of gender roles.

53. Where harsh punishments are imposed that do not conform to international human rights standards, such as the death penalty or severe corporal punishment, their persecutory character is particularly evident. What is decisive in a refugee status determination is whether there is a real risk of harm upon return to the country of origin. Persecution may be found even where there is no conclusive country of origin information providing evidence that laws criminalising homosexual conduct are actually enforced.

54. LGBT applicants who have concealed their sexual orientation in their country of origin might not have experienced harm in the past sufficient to amount to persecution. It is possible that their conduct was not a voluntary choice and was modified precisely to avoid the threat of being persecuted. The absence of persecution in the past does not necessarily imply that there is no risk of persecution in the future. As long as the asylum seeker can show that he or she has a well-founded fear of persecution or that there is a real risk of serious harm, he or she should have the opportunity to receive asylum or subsidiary protection. Consequently, LGBT persons who have left their country of origin for a reason other than their sexual orientation or have “come out” after arrival in the country of asylum could qualify for refugee status if they can demonstrate a well-founded fear of future persecution.²⁰

8. Gender issues in the asylum determination procedure

8.1. Discrimination

55. Female asylum seekers face additional problems upon arrival and during their stay in the host country. First of all, their access to the asylum system itself might be impaired due to discrimination. One example is the queue at the asylum office, which might be open only for a limited time per day and in which it might be difficult for a women to claim her place against men who may show her little consideration. Asylum-seeking women who have families are often supposed to care for the children, making it more difficult for them to access the asylum procedure. Many refugee and asylum-seeking women are also dependent on the status of a male family member who is or has been the principal applicant in an asylum claim. He may directly receive and retain control over any financial or other material assistance that is provided. Female asylum seekers are often victims of discrimination in the host country, just like women in general face discrimination in society. However, in the case of a female asylum seeker the consequences are multiplied and magnified.

56. Although many Council of Europe member states are stepping up their work in order to streamline a gender understanding into public decision-making, policy and operations, this thinking is not always reflected in the asylum procedure. Women seeking asylum in Council of Europe member states should, however, have their protection claims determined by an asylum system that is informed in all aspects of its policy and operations, by a thorough understanding of the particular forms of persecution, violence and human rights abuses that women experience because of their gender and of their particular needs. They have the right to be treated with fairness, dignity and respect, in accordance with international refugee law and the Council of Europe and other international human rights standards.²¹

8.2. Identification of women asylum seekers

57. IOM points to the problem of identification. According to IOM, large flows of migrants are predominantly male, whereas female asylum seekers more often arrive on an ad hoc basis. It is important to ensure that ad hoc arrivals receive appropriate information and that they are given the possibility of being identified in the same way as those who arrive in large-scale or mass flows of mixed migration, which are often received by international organisations such as the UNHCR, IOM or the Red Cross. If the identification process is not solid, women and girls that could be asylum seekers risk falling through the cracks in the system. It is also important to give victims of persecution access to support upon identification, independently

²⁰ Ibid., paragraph 23.

²¹ Asylum Aid, “The rights of women seeking asylum: a charter”, p. 2.

of a possible asylum procedure. The rapporteur draws the conclusion that women and girls might be unable or reluctant to identify themselves as asylum seekers.

58. When women do arrive in mixed flows they are in a minority and are therefore particularly vulnerable. According to information provided by Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), 80% of women arriving on the Italian shores claim to have been exposed to sexual abuse by their smugglers.

59. It is important to have a set of identification criteria in order to cater for needs, such as shelters, or to provide a recovery period before the asylum process sets in. This might be particularly important for victims of trafficking. Identification should also include the special needs of the individual. Women might suffer trauma due to gender-based or other forms of violence and it is therefore important that they are given sufficient time to reflect and recuperate before the asylum procedure is initiated. The International Committee of the Red Cross (ICRC) has set up "listening houses" in countries of origin with a view to receiving women who need to talk about their experience of violence, for example in the Democratic Republic of Congo. Similar institutions could be set up also in countries of destination. Additional psychological and physical care for survivors of trauma should be provided, including counselling services for families as a whole, where this is requested.

60. Violent acts are part of certain cultures and it is often the whole of society that is implicated in violence against women in all its forms. Consequently, it might be difficult for the women themselves to recognise that they have been victims of gender-specific violence or gender-related persecution that might qualify them for refugee status.

61. It is important that relevant residence and other permits are issued to the female asylum seekers as soon as possible after their identification and that such permits are issued in the woman's name and given to her personally, with a view to releasing her from possible dependence on male relatives.

8.3. *The asylum application*

62. In order to enable women to put forward their asylum claims, it is also important that asylum applications are individualised and not only submitted and registered with regard to a married couple or a family. When a woman is dependent upon a male family member for her legal status in the host country and he takes the decision to return, he might thereby forfeit her refugee status at the same time. For the same reason, it is important that a woman who wishes to divorce can do so without losing her refugee status. These problems are of course shared by all female asylum seekers, but victims of gender-based violence are particularly vulnerable.

63. The female asylum seeker should be informed in private of her right to make an independent application for asylum (separate from her husband) at any stage and of the right to be subsequently interviewed without the presence of family members. It should be ensured that women are given the opportunity of filling out their asylum applications themselves, independently of their husbands or male relatives.

64. Female asylum seekers may also have difficulties seeking necessary legal remedies. They are often in a situation of dependence vis-à-vis their husbands or families and they might have difficulties interacting with and trusting the authorities. The authorities might not be as accessible as they should be. If in an irregular situation or awaiting return following an unsuccessful asylum application, the women concerned might be reluctant to seek assistance from the authorities. Female asylum seekers should be provided with assistance by counsellors and interpreters wherever appropriate. The female asylum seeker should be given a female counsellor or interpreter if there is any indication of gender-sensitive issues arising during the asylum claim.

8.4. *The interview situation*²²

65. There are also obstacles for women once they have entered the asylum system. Member states of the Council of Europe generally agree that the person conducting an interview with an asylum seeker should be of the same sex. According to the UNHCR, however, there is a gap between this principle and reality (for example, when there is a lack of qualified female interpreters). Female interviewers and interpreters should be available automatically and not be subject to a request by the asylum seeker. At the very least, the female asylum seeker should be offered the option and not left to raise the issue herself.

²² ECRE, Position on asylum seeking and refugee women, December 1997, paragraphs 32 and 35-36.

66. The setting of the asylum interview is crucial. It may seem obvious, but it is important to point out that in interviews with women, both the authorities and legal representatives should be particularly conscious of the need for discrete and tactful communication that takes account of possible reactions to trauma. The interview must also be culturally sensitive. It is important that the setting is such that the woman feels comfortable enough to reveal all the relevant facts with regard to her asylum application. She should as far as possible be meeting the same officials throughout the procedure in order to enable her to develop trust in that person, thereby making it easier for her to tell her story. For the same reason, the asylum procedure should allow her sufficient time.

67. It should be ensured that both open-ended and specific questions which may help to reveal gender issues relevant to an asylum claim are used in all asylum interviews. Women who have been involved in indirect political activity or to whom political opinions have been attributed, for example, often do not provide relevant information in interviews due to the male-oriented nature of the questioning. Female applicants may also fail to respond to questions concerning the type of harm that they fear, such as sexual abuse.

68. The type and level of emotion that a female asylum seeker displays during an interview should not affect her credibility. For example, a lack of displayed emotion does not necessarily imply that the woman is not deeply affected by the harm she has suffered. Interviewers and decision-makers should understand that cultural differences and trauma play an important and complex role in determining behaviour.

69. Interviewers often conclude a "lack of credibility" in interviews where the experience of persecution is related to a woman's gender. Delay in submitting the application, or giving an account of gender-specific harm at a late stage in an application, should not undermine the credibility of a woman's application, as this delay may be due to shame or the effects of trauma.

8.5. Training of the interviewer

70. During the interview, questions should be asked with a view to helping the woman reveal gender issues relevant to the asylum claim. In order to be able to do this, the interviewer should have the appropriate training.²³

8.6. Country of origin information²⁴

71. Authorities should use country of origin information that is up to date and that has relevance as evidence in women's asylum claims. If these factors are not gender sensitive, the female asylum seeker has to work harder than her male counterparts in order to get her story across and have it assessed in a neutral and correct way. It is therefore important that the role, status and treatment of women in the country of origin is fully understood by interviewers and asylum decision-makers. Where such information is lacking, interviewers should take care to obtain detailed testimony that provides a coherent account of the basis for fear. Country of origin information often establishes that a certain country has adequate legislation in place. However, it rarely provides sufficient detail on whether the legislation is implemented or not. Country of origin information is often formulated with regard to adult male experience. This is a disadvantage for girls and women in the asylum process.

72. Country of origin information should be collected that has relevance as evidence in women's claims. Accurate, up-to-date information should be obtained from the public domain (including non-governmental) sources on issues such as the position of women before the law, the political rights of women, the social and economic rights of women, the cultural and social customs of the country, the existence of practices such as female genital mutilation, and the incidence and forms of reported violence against women. Information should also include the protection available to them and the penalties imposed on those who perpetrate the violence and, of course, the risks that a woman might face on her return from making her claim in the asylum country.

²³ See more about the training of officials in the asylum procedure in the Assembly report on improving the quality and consistency of asylum decisions in Council of Europe member states, Doc. 11990.

²⁴ ECRE, Position on asylum seeking and refugee women, December 1997, paragraphs 33-34. See also Immigration Advisory Service (IAS), "The refugee roulette: The role of country information in the refugee status determination", January 2010

8.7. Standard of proof

73. Normally, it is the applicant who bears the responsibility of establishing the accuracy of the facts on which the claim is based, by submitting oral or documentary evidence. UNHCR has noted: "The burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached".²⁵ In the context of the applicant's responsibility to prove facts in support of her claim, the term "standard of proof" means the threshold to be met by the applicant in persuading the adjudicator as to the truth of her factual assertions. Facts which need to be "proved" are those that concern the background and personal experiences of the applicant, which purportedly have given rise to fear of persecution and the resultant unwillingness to avail himself/herself of the protection of the country of origin.

74. In the context of national criminal procedure, it is a sad fact of life that women often have difficulties proving that they have been subjected to violence. The reason is that violence against women, including domestic violence and rape, most commonly takes place within the confines of the private home without witnesses. Such acts may also have taken place a long time before the trial, and it is therefore difficult to give the exact date and time of the act. In order to protect the presumption of innocence of the person charged with a crime and to give him the benefit of the doubt, the required proof must normally not be eased for the female victim in such cases.

75. The same difficulties persist for a woman who invokes gender-based violence as a ground for asylum. In fact, on one hand, the burden of proof in such a situation becomes even more difficult to surmount since the facts often took place in a different country and due to the fact that the asylum seeker's resources are often very limited. Often she has had to leave important documents behind. On the other hand, contrary to the domestic criminal procedure, the required proof could be significantly eased for the female asylum seeker, since in the asylum procedure there is no defendant whose rights to a fair trial have to be taken into account. The aim of the asylum procedure is basically humanitarian.

9. The social situation of victims of gender-based violence and gender-related persecution

76. According to IOM, female migrants (which include also asylum seekers and refugees) suffer from violence to a higher extent than other women.²⁶ In 2006, in Ireland, migrant women represented 13% of those who used services reserved for women victims of violence, but made up only 5% of the female population over 15 years of age. In Norway, migrant women represent 56% of women seeking help against violence. In Spain, the number is 44%. There are also indications that this discrepancy is growing. However, these statistics are not broken down with regard to the legal status of the women concerned, whether they are asylum seekers, refugees or regular or irregular migrants.

77. Asylum seekers awaiting appeal may suffer financial hardship during long delays in the appellate processes of certain European countries. Such conditions can leave them vulnerable to exploitation and abuse.

78. ECRE has proposed a set of measures in order to meet the social needs of refugee women. Women should be represented among the refugees who are consulted at every stage of policy and programme planning. Opportunities should be created for women-only space in discussions and interviews. ECRE has also called for information services to be provided to all asylum seeking and refugee women in order to assist them in accessing their rights under national law in relation to discrimination, social assistance, employment, health and domestic violence.²⁷

79. Asylum-seeking women and girls should have access to health care and should be informed of the availability of these services. Asylum-seeking women and girls should have the opportunity to be attended by female medical professionals if they so wish.

²⁵ UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, paragraphs 6-7.

²⁶ Information presented orally at the Conference "Migrant and violence against women in Europe" which took place in Paris on 10-11 December 2009. See also "Taking Action against Violence and Discrimination Affecting Migrant Women and Girls", IOM Factsheet.

²⁷ ECRE, Position on asylum seeking and refugee women, December 1997, paragraphs 45-54.

10. Gender issues in detention and collective accommodation

80. A special situation is that of women in detention or in reception centres. They can be exposed to violence or threats of violence or to humiliating situations such as searches and examinations performed by men or exposure to men when using toilets or showers. They can be denied hygienic protection, they can be insulted and subjected to degrading language.

81. Asylum seekers should not be detained except in exceptional cases. Where they are detained, the following safeguards should be put in place: separate facilities should be available for women and men, unless specific requests are received from all members of a family that they wish to cohabit. As for reception centres and "international zones" at ports and airports, measures should be taken to improve the security of women and girls. In both cases, personnel should receive training on gender-sensitive behaviour.²⁸

11. Conclusions and proposals

82. Generally, and when assessing asylum claims in particular, Council of Europe member states must not allow themselves any relativism: human rights violations or crimes against women can never be justified by reference to history, religion, tradition or culture. All Council of Europe member states should ensure that gender-specific violence and gender-related persecution are taken fully into account in asylum claims under the 1951 Geneva Convention.

83. While many member states are stepping up their work in order to streamline a gender understanding into public decision-making, policy and operations, this work does not always translate into action in the asylum process. Much greater progress needs to be made on this front.

84. The rapporteur emphasises the importance of greater consultation with refugee women at all stages of policy and programme planning, and has called on European governments to actively support the development of refugee women's fora and associations. He recommends that the Committee of Ministers develop guidelines that detail good practice in the determination of asylum claims from women and girls, taking into account existing guidelines in Australia, Canada and the United States.

85. It is necessary to examine how to tackle gender-specific violence and gender-related persecution in countries of origin, even if it is not the role of this report. In this context, the rapporteur would like to underline that by continuously promoting equal opportunities, equal participation, non-discrimination and the eradication of domestic violence, both on their own territory and in an international context, Council of Europe member states contribute to making women less dependent on men and on male traditions. This will contribute to making them less vulnerable to violence and more capable of counteracting violence and persecution when it occurs. By implementing the relevant Council of Europe and other international instruments, member states set an example by consolidating their moral prerogative to promote the same policy and rules in countries of origin.

²⁸ Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe (rapporteur: Ana Catarina Mendonça, Portugal, Socialist Group).