

Refugee Policy in the European Union with focus on Refugee Women

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Introduction

The European Union (EU) is increasing its influence within Europe. It has developed into a highly effective and organized institution with an expanding scope of specialized institutions. The EU deals with many different types of issues and situations. The economy and budget of Europe, foreign policy and defense matters, and further integration of new countries are all important factors. However, the most important and increasingly controversial matters are immigrants and refugees in Europe. As the EU expands and more countries become integrated, more legal immigrants are traveling between countries. However, with new external EU borders, illegal immigrants are discovering new ways into Europe hoping for new opportunities. Illegal immigration is just as hot of a topic in Europe as it is in the United States. Immigration leads to fear that jobs will be overtaken, and slums will fill to over capacity.

However, one of the most critical issues that Europe is currently facing is the mixed influx of refugees and immigrants. The situation in Iran, as well as the interventions in Afghanistan and especially Iraq have caused especially in Iraq conditions leading to a continued outflow of persons fleeing generalized violence and insecurity. In total the number of asylum seekers in the EU in 2007 was 222.900, 11 % more than in 2006 which was 201.000.¹

Among asylum seekers usually more than half are women and girls. Considering, that due to ever stricter EU external border controls, access to the territory of EU member states becomes increasingly more difficult, persons in need of protection, including females, resort often to smuggling and trafficking, in the process of which they are

¹ <http://www.unhcr.org/statistics/STATISTICS/47daae862.pdf>

particularly vulnerable. Though refugee authorities have developed more awareness with the assistance of the UN Refugee Agency (UNHCR)² and refugee non-governmental organizations (NGOs), the problems of refugee women require continued attention. Women refugees coming into Europe face different challenges than men, even though they should be treated equally under refugee law. Many women are entering Europe after having been sexually or physically harassed, persecuted, discriminated against and even mutilated. They face health risks not faced by men, and are threatened to be forced back to the country they came from. There are international norms of course, which prohibit such atrocities against women, but the fact is that women are still being targeted.

Refugee policy in the EU member states is based on the 1951 Geneva Convention relating to the Status of Refugees (1951 Convention), which is silent about procedures, and therefore there are 27 different asylum procedures in which asylum applications are examined.

The 1951 Geneva Convention in Article 1 defines a refugee:

*Well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*³

Refugee protections in states which have and have not ratified the 1951 Geneva

² UNHCR, The Office of the United Nations High Commissioner for Refugees was created in 1950 by the United National General Assembly with a mandate to assist refugees and find solutions to their problems. The primary purpose was safeguarding the rights and well-being of refugees by ensuring that persons in need of protection can exercise the right to seek asylum and find safe refuge in another state, with the option to return home voluntarily, integrate locally or resettle in a third country, by working with governments, regional organization, international and non-governmental organization.

³ <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>, ratified by 146 states.

Convention, its article 33 constitute customary international law which states,

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

There are of course exceptions to that Article of the Convention, if a refugee constitutes a danger to the country he or she has entered it is considered grounds for returning that person can be expelled.⁴

Refugees in Europe

After the Second World War, millions of refugees fled to the safety of Western Europe. The refugees came from all over, especially Eastern Europe. Upon the conclusion of the Cold War, millions of refugees from Eastern Europe fled to Western Europe. In the 1990’s there was another swell in refugees in Europe. During and after the Bosnian Conflict, refugees from the former Yugoslavia fled to Europe.

The European Union has developed a legal framework since 1990 with the Schengen Convention which foresaw the abolishing of internal border controls and increase with compensatory measures, such as visas, sanctions for crossing of external border⁵ and the Dublin Convention for determines the country responsible for examining

⁴ Article 33, Para 2: (If) danger to the security of the county in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. Or if any of the following has been committed. A crime against peace, a war crime, or a crime against humanity, a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee, or has been guilty of acts contrary to the purpose and principle of the UN.

⁵ http://www.europe.org.ro/euroatlantic_club/1990_Convention_applying_the_Schengen_Agreement.php

an asylum application.⁶ The Convention states that a refugee must apply for asylum in the first European Union country they enter. The purpose of the Convention was to avoid “asylum shopping” within the European Union, meaning where an asylum seeker attempts to claim asylum in multiple European Union States. Additionally, this measure addressed the perception that asylum seekers may choose one European Union Member State based on a higher standard of reception conditions or social security assistance. Another aim of the Convention is to avoid “asylum seeker in orbit” where an asylum seeker is transferred between Member States, with no state willing to take responsibility for examining his or her claim. The Dublin mechanism is also an essential part of the creation of the Common European Asylum System (CEAS) which are efficient and coordinated policies for dealing with asylum.⁷

The 1993 Maastricht Treaty, signed on 7 February 1992, and entered into force on 1 November 1993, provided for ‘three pillars’: the European Communities, common foreign and security policy, and Asylum, migration, police and judicial cooperation in criminal matters. In the framework of the thus established intergovernmental cooperation in justice and home affairs, asylum policies were discussed, resolutions and conclusions on specific aspects prepared in cooperation with UNHCR.

The 1997 Amsterdam Treaty signed on 2 October 1997 and in force since May 1999 brought about first binding norms, including the commitment that every action taken in the area of asylum would be done in line with the 1951 Geneva Convention.⁸

⁶ http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees_DocC_eng.htm.

⁷ Van Krieken, Peter J., *The Consolidated Asylum and Migration Acquis. The EU Directives in an Expanded Europe*. The Hague, 2004.

⁸ The Amsterdam Treaty: <http://europa.eu/scadplus/leg/en/s50000.htm>

This step paved the way toward the EU's further action to meet the challenges of future international situations, connected with refugees and refugee women, police and judicial cooperation to combat racism, terrorism, trafficking in persons, drug and arms trafficking, and corruption through closer cooperation between police forces, customs, judicial authorities with Europol.

The establishment of an area of freedom, security and justice in which fundamental rights and non-discrimination and combating discrimination based on nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation were to be handled. Also new provisions were developed on the equal treatment of men and women. A new title headed "visas, asylum, immigration, and other policies related to the free movement of persons" was integrated into the Amsterdam Treaty established the European Community asylum policy was based on the international rules provided by the 1951 Geneva Conventions and the New York Protocol of 1967. Several measures were taken to protect refugees, but were loosely enforced. Minimum standards on reception of refugees were established, as well as minimum standards with respect to the qualification of nationals of non-member countries as refugees. Under the Finnish EU Presidency, the Tampere Summit of Heads of States and Government was held in October 1999 which in its Presidency Conclusions laid down the plan for the development of asylum through 2004 toward a European Common Asylum System in 2010, including norms for minimum standards on procedures in Member States for granting or withdrawing refugee status. Promoting a balance of efforts between member states in receiving and bearing the consequences of receiving refugees and displaced persons, remains a challenge. Immigration policies included minimum standards on conditions of entry and residence,

as well as standards on procedure for the issue by Member States of long-term visas and residence permits, also measures for illegal immigration and illegal residence including the repatriation of illegal residence. Overall Tampere paved the way for more transparent and democratically based freedom, security and justice. The most important aspect of Tampere was the agreement of aims of the Common European Asylum System (CEAS) and migration system. The European Union recognized the need for a comprehensive approach between all member states. The Policy would address human rights, poverty, conflicts, women and children.⁹ Tampere foresaw that the EU in developing the CEAS should consult with UNHCR and other international organizations and include in the short-term:

*A clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.*¹⁰

Also in the long term, all Member States should use a common asylum procedure and a uniform status for those who are granted asylum, and ensure that no one is returned to persecution. Additionally, a system for identifying asylum seekers should be created and used (EURODAC).¹¹ The Dublin II Regulation, which is based on the 1990 Dublin Convention is to regulate a member states responsibility for an asylum-seeker who has illegally entered into EU territory. In order for the European Union to address the refugee

⁹ The Charter of Fundamental Rights of the European Union has been adopted in 2007 and if implemented as stands, it can make a contribution for the treatment of refugee women in the EU. *Political, human rights, and development issues in countries of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children.*

¹⁰ Tampere European Council 15 and 16 October 1999 Presidency Conclusion
http://www.europarl.europa.eu/summits/tam_en.htm.

¹¹ Eurodac a European Union-wide electronic system for the identification of asylum,
ec.europa.eu/justice_home/fsj/asylum/identification/fsj_asylum_identification_en.htm

and asylum issue effectively and maintain fundamental freedoms and human rights; international organizations need to be consulted, especially UNHCR. Relevant UN texts and conventions addressing women's rights and has called for an end to discrimination are reference instruments for the European Union member states in their developing and addressing policies in general and here concerning women refugees and ensuring their safety and prosperity in particular. For example the Convention on the Elimination of all Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 in force since 3 September 1981 foresees that:

*Discrimination against women is incompatible with human dignity and constitutes an obstacle to the full realization of the potentialities of women; therefore, the right of women to share equally in improved conditions of life must be promoted and protected*¹²

¹² Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>. The rights of women are declared in international legal instruments issued by the United Nations. The declaration acknowledges that violence against women constitutes a violation of their rights and fundamental freedoms.

Violence against women shall be understood to encompass, but not be 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. Women are also entitled to the protection of all human rights and fundamental freedoms in economic, social or political fields. These rights include the
 - a) right to life
 - b) right to equality
 - c) right to liberty and security of person
 - d) right to equal protection under the law
 - e) right to be free from all forms of discrimination
 - f) right to the highest standard attainable of physical and mental health
 - g) right to just and favorable conditions of work
 - h) right not to be subjected to torture, or other cruel inhuman or degrading punishment¹³

Among other initiatives the declaration calls for the facilitation of women's movement and non-governmental organizations and to cooperate with them at local, regional and national levels. Also regional organizations should be created to work towards the elimination of violence against women. The Declaration on the Elimination of Violence Against Women was signed on 21 December 1993. The Declaration called for the "need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity, and dignity of all human beings."

The Convention recognizes the equality between women and men, and that all humans are born free and equal in dignity and rights without distinction based on sex. Additionally the right of women to enjoy all economic, social, cultural, civil and political rights should be upheld, and promoted by specialized agencies which advance equality between women and men. The Convention also calls for legal protection of women equal to that of men, and, that any act of practice of discrimination against women is acted upon by public authorities and institutions. Also, legislative measures, sanctions, and other measures to eliminate discrimination should be created.

The Guidelines on the Protection of Refugee Women was prepared by the UNHCR in July 1991¹³. These addressed the issues that many refugee women are faced with upon entering a country of refuge. Even though the 1951 Geneva Convention in Article 1 a, for the definition of refugees includes ‘social group’ it only in recent years was operationalized through court judgments that women can be recognized as refugees under this category, the guidelines state more clearly that refugee women face unique circumstances and that along with the problems faced by all refugees, women in particular are more vulnerable and more frequently victims of human rights abuses, conflicts, and other acts of aggression. Therefore women need special protection, such as protection against sexual and physical abuse, sexual discrimination and manipulation. Additionally women need protection against forced return to their country of origin, security against attacks and violence, protection from prolonged detention, and equal access to basic items such as food, shelter, clothing and medical care. The guideline also outlines short and long term situations which must be addressed by international

¹³ www.unhcr.org

organizations and government organizations.

The short term stage focuses on preventing attacks on women refugees crossing the border, getting refugee women to assist in the planning and implementation of assistance services and protection measures, creation of assistance policies that ensure that single refugee women gain access to food, shelter, health care, and clean water. Giving refugee women a fair hearing to determine their refugee status is of particular importance. The long term refugee situations owe more to participation of refugee women in the planning, implementation, assistance, and protection measures, prevention of attacks on refugee women in refugee camps, access of women to income-generation and skills-training programmes to ensure support, access of women to programs for voluntary repatriation, resettlement, and local integration. Also, that staff should include women who are knowledgeable and sensitive to women's issue in order to implement better programs for women refugees. The guideline also calls for involvement from UNHCR staff, non-governmental organizations, host-country governments, and refugees.

Concluding remarks

EU member states continue to apply different standards and procedures in handling refugees seeking asylum. In selected cases refugees still apply for asylum in several countries within the European Union, which shows that the Dublin system is not yet working as expected. If there will be a common European asylum system for processing refugee applications all Member States need to harmonize their work and not at the lowest common denominator as seen in many instances. Further measures are still to be taken to improve standards for refugee treatment and in particular to implement

specialized programs for addressing special protection needs of refugees like women, including providing relevant gender-differentiated data, as there is still a certain ‘invisibility’ of refugee women and pertinent gender issues on the top on the agenda both of EU member states as of the European Commission. The shared information system should assist for information to be shared in all Member States so that all women refugees can be given necessary attention they need. The refugee status determination procedure in member states needs to take into consideration that the persecution of women may differ in terms of its form and motivation. For example vulnerability due different cultural backgrounds and family relations may lead to torture and ill treatment, which is often ignored as abuse and thus not properly recognized. Many women are persecuted for and are victims of refusing to enter into arranged or forced marriages, genital mutilation, and honor killings in their home countries and often within EU member states. Even though attention has increased towards these issues in the recent years, EU and member states need yet to move these challenges higher to the political agenda and produce results for strengthening protection of and assistance for refugee women. To more fully document and illustrate this point, we provide the paper prepared by the European Council on Refugees and Exiles (ECRE) “Position on asylum seeking and refugee women” in the annex here.

Annex, Paper prepared by the European Council on Refugees and Exiles (ECRE) on:

Position on asylum seeking and refugee women, December 1997

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executive summary

In this position paper, the European Council on Refugees and Exiles (ECRE) has compiled the views of its member agencies, consisting of some 60 organisations throughout 22 European countries, with regard to how the claims of female asylum seekers should be determined and how female asylum seekers and refugees should be received and settled in European countries of asylum.

statement of the problem

Female asylum seekers and refugees are unable to benefit equitably from current legal protection and social assistance measures for a number of reasons which this paper examines.

ECRE notes that the difficulty of assessing the problems facing refugee and asylum seeking women is increased by a lack of gender-differentiated data in European countries. This perpetuates the invisibility of refugee women and gender issues, and inhibits the development of policy and planning.

The legal obstacles faced by women in asylum determination fall into two broad categories: substantive and procedural. International refugee instruments – most notably the 1951 Refugee Convention – are based upon the assumption that all refugees, irrespective of their gender, face the same problems and will be treated equally. However, while there is nothing which explicitly precludes a woman from being recognised as a refugee, the current interpretation of these instruments by European States both reflects and reinforces gender biases.

Women are frequently persecuted for reasons similar to those of their male counterparts. However, the persecution of women may differ, both in terms of its form and its motivation, from that commonly experienced by men. Many women are targeted because they are community organisers or because they persist in demanding that their rights or those of their relatives are respected. Others are targeted because they are vulnerable - young women who can easily be sexually abused or mothers who will do anything to protect their children. In addition the authorities in some countries have exploited family relationships to intensify torture and ill-treatment. An attack on a woman may also represent an attack on her ethnic group; because they have a reproductive role, women may be viewed as the embodiment of the identity and future survival of a given ethnic group.

In many parts of the world, women who do not live according to the standards imposed on them by their societies can suffer cruel or inhuman 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.

The substantive problems facing asylum seeking women stem from the failure of decision-makers to incorporate the gender-related claims of women into their interpretation of the existing grounds enumerated in the 1951 Convention. Decision-makers have largely failed to recognise the political nature of seemingly 'private' acts of harm to women. This paper argues that the interpretation of the 1951 Convention refugee definition should be reconsidered so that the claims of women are not precluded. It argues that both political opinion and membership of a particular social group can and should provide a legal basis for recognition of women fleeing persecution as Convention refugees. It proposes that European guidelines on gender issues in asylum cases should be developed and urges European States to follow Canada, the United States and Australia in developing and implementing such guidelines.

The procedures for determining asylum are also critical. Current procedures are based on the widespread assumption that asylum seekers are politically active men who have been persecuted by the State authorities as a result of those activities, and these procedures therefore need to be reviewed and amended through guidelines or legislation. It is particularly notable that information on the human rights situation of women in countries of origin is often lacking or inadequate, despite the fact that such information is essential for a fair evaluation of a claim.

This paper also examines the social aspects of women's needs both as asylum seekers and refugees in Europe, and the question of why they do not benefit equitably from social service provision. Particular problems concerning the physical safety of women arise in collective refugee reception centres, and this is as true in Europe as in other regions of the world. Such communal accommodation is usually overcrowded and lacks privacy for women. These factors increase the risk of sexual or other violence against them.

This paper highlights the most important recommendations concerning protection, social assistance, and voluntary return of women. It aims to raise awareness and improve standards among European NGOs, lawyers, judiciaries and the governmental sectors. ECRE believes that if harmonisation is possible at the level of best practice it would bring many improvements to the treatment of female asylum seekers and refugees in Europe.

summary of key conclusions

1. European States should develop best practice guidelines on the determination of asylum claims from women, at the regional and at the national level, and should ensure that the content of such guidelines is widely known and implemented at all levels.

2. Any of the five enumerated grounds can and should provide a legal basis for the recognition of women fleeing persecution as Convention refugees, in particular many claims from women can be determined on the grounds of religion or political opinion. This should be reflected in the practice of European asylum States, who should no longer grant secondary or 'de facto' statuses to women who are refugees within the meaning of the Convention.

3. European decision-makers should not evaluate gender-specific forms of harm according to a standard different from that applied to other forms of harm which may amount to persecution. Human rights instruments should be used as the basis for assessing the risk of persecution.

4. Where a woman was unwilling to seek protection from State authorities, for example where it would have put her at further risk of abuse by a male relative, this fact should not prejudice her claim to asylum. European receiving States should not exclude persecution by non-State agents from their common understanding of 'persecution', and should regard State authorities in the country of origin as bearing responsibility for any persecution by private individuals where those authorities have failed in their duty to protect the victim.

5. Country of origin information should be collected that has relevance as evidence in gender-related claims, and this information should be routinely utilised by decision-makers. A gender perspective should always be incorporated into decision-making regarding the 'safety' of a country of origin; conditions justifying use of the cessation clause; and the existence of an 'internal flight alternative'.

6. When a female asylum seeker arrives accompanied by family members, she should be informed in private of her right to make an independent application and to be interviewed without the presence of other family members. Female interpreters and interviewers should be made available.

7. Specific measures to address the physical safety of asylum seeking and refugee women in European asylum States should be introduced, particularly where collective accommodation is provided.

8. All asylum seeking and refugee women should be given direct and equal access to advice, information and services in the host State, and all refugee women should receive a legal status, and set of personal identity documents, independent of their male relatives.

9. Asylum seeking and refugee women should be consulted at all stages of policy and planning, and should participate proportionately in whatever systems exist to consult residents in places of collective accommodation. They should also be fully consulted to ensure that any 'voluntary return' of refugees to a country of origin is truly voluntary in nature.

10. All asylum statistics provided by European States (including recognition rates, figures for refugees resettled from overseas, and asylum seekers in detention) should include a breakdown by gender.

general remarks

1. The European Council on Refugees and Exiles (ECRE) is concerned with the protection and assistance of asylum seekers and refugees in Europe. Within this overall concern, ECRE aims to improve the protection and assistance of asylum seeking and refugee women.
2. The ECRE Position on Asylum Seeking and Refugee Women is based on a wide range of relevant international refugee and human rights instruments. It is also based on the UNHCR 'Guidelines on the Protection of Refugee Women' and 'Guidelines on Sexual Violence against Refugee Women', the six UNHCR Executive Committee Conclusions on Refugee Women, the 4th UN World Conference on Women 'Beijing Platform of Action' (E5), the Australian Department of Immigration and Multicultural Affairs 'Guidelines on Gender Issues for Decision- Makers', the Canadian Immigration and Refugee Board 'Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution (Update)', and the United States 'Considerations for Asylum Officers Adjudicating Asylum Claims from Women'.
3. This position should be read in conjunction with the ECRE 'Position on the Reception of Asylum Seekers' (1997) and in the light of ECRE's other policy statements on asylum. ECRE believes that the issues highlighted here must also be reflected in other policy positions.
4. ECRE places emphasis on the need for greater consultation with refugee women at all stages of policy and programme planning, and calls on European governments to actively support the development of refugee women's fora, associations and co-operatives.

In developing this paper, ECRE has consulted with several self-organised refugee women's groups. ECRE has also consulted with leading independent experts, and refers both decision-makers and practitioners for further information on legal protection issues to two publications in particular: 'Women and Refugee Status' and 'Women as Asylum Seekers: A Legal Handbook'.

5. ECRE calls on European States, whether acting separately at the national level or in concert at the international level, to adopt policies and procedures that reflect the following recommendations:

the need for guidelines

6. European States should develop guidelines which detail good practice in the determination of asylum claims from women, taking into consideration the existing guidelines of Canada, the United States and Australia. The following substantive and procedural issues must be included, in addition to other issues specific to a particular context.

substantive issues

7. Increased emphasis on the role of gender in persecution is not intended to alter the ordinary meaning of persecution. Rather it is intended to ensure that all aspects of the applicant's claim of persecution are fully considered.

'serious harm' and the meaning of persecution

8. Refugee women may have been subjected to forms of abuse, such as torture, beating or arbitrary detention which are not specific to their gender. There are also many forms of serious harm arising in asylum claims that are unique to, or more commonly affect, women. These include: rape, sexual abuse, female genital mutilation, forced marriage, violence within the family, forced sterilisation or forced abortion.

Gender-specific violence should not be evaluated differently from other forms of violence that are held to amount to persecution, and the appearance of sexual violence in a claim should never lead the decision-maker to conclude that the alleged harm is an instance of purely personal harm. In particular, where rape has occurred this should be regarded as other forms of serious harm and thus repeated occurrence should not need to be demonstrated in order to prove a well-founded fear of persecution. The fact that violence against women is universal is irrelevant when determining whether gender-specific violence amounts to persecution in a particular case.

9. Persecution can also take the form of severe restrictions on the way a woman behaves through, for example, dress codes and restrictions on movement, employment or education. It can also take the form of certain consequences resulting from divorce, separation of widowhood, and 'honour killings'. In some cases, these forms of serious harm can in themselves constitute persecution. Alternatively, the persecution may be identified as the consequences for a woman of refusing to submit to gender-discriminatory norms where the level of punishment for this refusal is particularly severe.

agents of persecution and indirect state responsibility

10. European States should fully recognise persecution by non-State agents, including where the State is willing but unable to provide protection from persecution. The current European Union position on interpretation of the refugee definition, which does not adhere to this principle is, in effect, discriminatory against female asylum seekers who very often seek protection from persecution by non-State agents.

11. The State is certainly responsible for persecution where it is able but unwilling to protect the victim, where it implements law or policy which is inherently discriminatory against women and leads to persecution, where law or policy is administered through persecutory means, or where the penalty for non-compliance with law or policy is disproportionately severe.

Many women are persecuted by private individuals, for example their spouses or other relatives, who do not have a direct relationship with the State. Where a State facilitates, conditions, accommodates, tolerates or excuses private violations of women's rights, the State bears responsibility. A private individual may commit the act of persecution, but the State should be regarded as clearly failing in its protection of the victim due to its lack of diligence to prevent, control, remedy or discipline such private acts through its executive, legislative or judicial organs.

12. The failure of State protection should be recognised to clearly exist in cases where a woman has sought, without success, police or court protection, or where no such protection is available to her. However, where the woman cannot reasonably be expected to turn to the authorities, because it would put her at further risk or because she has doubts as to whether the authorities will protect her, this absence of an attempt to seek State protection should not prejudice her case.

13. Financial, logistical, social, cultural and other barriers to reaching safety within the country of origin may affect women more than men. Therefore, in determining whether a woman could reasonably have sought safety through an 'internal flight alternative', decision-makers should consider the ability of women to travel safely to the area in question and to stay there without facing undue hardship.

1951 Refugee Convention grounds

14. The refugee definition in the 1951 Convention should be properly interpreted as providing protection for women who demonstrate a well-founded fear of persecution, including gender-related persecution, by reason of any of the five enumerated grounds, either singly or in combination.

15. Although there are some cases where a woman's gender is the only reason for the persecution suffered or feared, many women are persecuted not simply because they are women but because they have acted in ways which are considered inappropriate. Any of the five enumerated persecution grounds may account for women's experiences of persecution, even where serious harm takes a gender-specific form. In this sense the absence of gender as an enumerated ground within the Convention does not mean that women who have gender-related aspects to their claim cannot be protected, provided that the refugee definition is properly interpreted.

16. Most claims involving fear of persecution for transgressing religious or social norms can be determined on grounds of religious or political opinion, though UNHCR Conclusion No. 39 also accepts the use of 'particular social group' as an appropriate ground in such cases.

17. Although persecution on the grounds of nationality and race is not specific to women, the nature of the persecution in these cases may take a gender-specific form, including sexual violence directed against women and girls.

18. The religious practices of many countries have significant implications for gender relations and, in consequence, for the persecution that may be suffered or feared by women. It should be recognised that the failure of women to conform to a role or model of behaviour prescribed by the official religion may be perceived as the failure to practise or hold religious beliefs, even in cases where the woman may actually hold the official religious faith.

19. The political nature of oppression of women in the context of religious laws and ritualisation should also be recognised. Behaviour contrary to tenets of the official religion may be perceived as evidence of an unacceptable political opinion that threatens the basic power structure of the State. There is thus a close relationship between religious and political persecution of women in many contexts.

20. The political activities with which women are involved are not, in many cases, as 'public' as making speeches, attending demonstrations or writing publications. Women may, for example, provide food, clothing and medical care to, hide or pass messages between political activists. This may be essential for the ongoing existence of political activity and the knowledge women gain through these activities puts them at risk. Moreover, women are often central to organisations which provide services to a community and these can be perceived as political in nature by the State authorities. It should be recognised that women engaged in indirect political activity may be at equal or even greater risk of persecution than their more publicly or directly involved male counterparts. It should also be recognised that the political opinions of male relatives are often attributed to women, who are subjected to persecution as a result.

21. Political opinion as grounds for granting refugee status should be interpreted to include opposition to extreme, institutionalised forms of oppression against women; a woman who opposes institutionalised discrimination or expresses views of independence from the social or cultural dominance of men in her society may be found to have been persecuted or to fear persecution because of her actual (or imputed) political opinion. If a woman resists gender oppression, her resistance should be regarded as political activity.

22. In certain cases, social group may be the only possible ground for the asylum claim. For example, women who are not themselves accused of holding a particular opinion may be persecuted simply in order to extract information or to demoralise their families or communities, and thus should receive refugee status on the basis that they are members of a

particular social group which is defined through kinship. Where a private individual is the agent of persecution, in the form of family violence for example, the social group ground may apply.

23. Gender and sexual orientation also intersect in ways which expose lesbians to particular harm that can not be fully accounted for on the basis of either status in isolation, and these claims may be recognised on the grounds of social group or imputed political opinion.

24. In summary, therefore, the appropriate Convention ground for a woman's claim to asylum will be dependent upon the particular circumstances of the case, and women's claims should not be examined solely in terms of the 'social group' ground if the aim is to truly give recognition to the nature of their experiences.

25. Where it is clear that a woman's claim does not fit within one of the five grounds of the Convention, but where she is nevertheless at risk if returned to her country of origin due either to the general political situation or to her own circumstances, another residence status should be afforded to her. States should not, however, grant such secondary statuses in cases where the applicant is a refugee within the meaning of the Convention.

determining the 'safety' of countries of origin

26. A State's assessment of whether a country of origin is 'safe' (where there is deemed to be "generally no serious risk of persecution") should always include a gender aspect in assessing that 'safety', and women should be exempt from accelerated procedures when it is clear that their situation in a certain country is generally less 'safe' than that of men.

27. A change in country circumstances generally viewed as a positive change may have no impact or even a negative impact on a woman's fear of persecution. An assessment should be made of a woman's particular fear and of whether any changes in country conditions are "fundamental" enough for her fear of persecution to be no longer well-founded. This should include an assessment of a change in a woman's own personal circumstances – for example, where a woman has divorced or otherwise transgressed social or cultural mores while in the country of asylum, she may face persecution on return.

procedural issues

asylum interviews and determination

28. It is essential that women are given legal advice and access to the refugee determination process.

29. Where a woman applies for asylum as a dependent, she should be informed in private of her right to make an independent application for asylum at any stage and to be interviewed without the presence of family members. She should be advised to consult a legal representative before doing so.

30. All those involved in the determination process should receive training so that they are sensitive to gender issues. In interviews with women, both the authorities and legal representatives should be particularly conscious of the need for discrete and tactful communication which takes account of possible reactions to trauma and is culturally sensitive.

31. Female interviewers and female interpreters must be available upon request, and where the competent authorities deem that it may be necessary, and refugee women should be promptly informed of this choice.

32. Both 'open-ended' and specific questions which may help to reveal gender issues relevant to an asylum claim should be incorporated into all asylum interviews. Women who have been involved in indirect political activity or to whom political opinion has 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 relate questions that are about 'torture' to the types of harm which they fear (such as rape, sexual abuse, female genital mutilation, 'honour killings', forced marriage, violence within the family, forced sterilisation or forced abortion).

33. 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 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 mores of the country, the prevalence of practices such as female genital mutilation or dowry deaths, the incidence and forms of reported violence against women, the protection available to them and the penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return from making her claim in the asylum country.

34. It is important that the role, status and treatment of women in the country of origin is fully understood by interviewers and decision-makers, on the basis of the information sources described above. Where such information is lacking, interviewers should take care to obtain detailed testimony which provides a coherent account of the basis for fear.

35. Interviewers often conclude a 'lack of credibility' in interviews where the experience of persecution is related to a woman's gender status. 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.

36. Moreover, the type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility. For example, a lack of displayed emotion does not necessarily mean that a woman is not distressed or 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.

resettled refugees

37. ECRE urges European States to accept for resettlement from overseas, as a matter of urgency, those women identified by the UNHCR Resettlement Division as being "women-at-risk". Travel arrangements should be expedited in accepted cases and special care taken to ensure both confidentiality and appropriate counselling in the reception of these women.

38. The general procedures associated with programmes of resettlement also have significant consequences for women who normally enter host countries as dependants of a male head of family. In some national procedures, male heads of family are processed and resettled first, with female relations following subsequently through channels of family reunification. ECRE calls for analysis of these procedures and their implications for the women involved.

detention

39. Asylum seekers should not be detained unless it is absolutely essential. ECRE has elsewhere defined the extremely exceptional grounds upon which detention may be reasonable, and emphasised that particular effort should be made to avoid the detention of nursing mothers and women in the later stages of pregnancy.

40. Where detention does take place, separate facilities should be available for men and women except where specific requests are received from all members of a family that they wish to cohabit. Confidential medical assistance from a female doctor should be available upon request, and any recommendation for release made by a medical professional should, with the consent of the detainee, be taken into account by the detaining authorities.

41. If requested by the detainee, family members should be immediately informed about the detention of other family members and contact permitted at the earliest opportunity and at regular intervals.

physical safety and conditions in reception centres

42. Throughout Europe, NGOs report an overall lack of security to be felt amongst unaccompanied refugee and asylum seeking girls and women, who are often exposed to harassment and abuse. ECRE therefore urges European governments to take preventative measures to improve physical safety of women in countries of asylum – for example, through assisting unaccompanied women to find places of accommodation where they feel secure and abstaining from the eviction of women from their homes following rejection of their application.

43. Collective accommodation may create conditions that are particularly lacking in safety and privacy for women. ECRE emphasises that where collective accommodation is used to receive asylum seekers, it should have the following characteristics:

- Proportional participation of women in whatever systems of consultation with residents may be used in the management of the centre;
- Personnel trained to be sensitive to the needs of refugee women and familiar with gender issues that may arise;
- Mechanisms to facilitate the reporting of physical and sexual violence, appropriate support and means of redress in such cases;
- Availability, upon request, of separate living quarters for women;
- Availability, upon request, of general and legal counselling services for women in conditions of privacy;
- Private toilets and bathing facilities that are not too distant from living quarters;
- Non-discriminatory systems for the distribution of assistance and information (ie - not solely via male heads of families).

44. Where 'international zones' at ports and airports are used to receive and temporarily accommodate asylum seekers, the physical safety of asylum seeking women in such places should be guaranteed, particularly through the authorities respecting their privacy. Where such 'zones' are used for detention of asylum seekers, the international standards applicable to other places of detention also apply.

settlement and integration

45. Asylum seekers awaiting appeal may suffer financial hardship during long delays in the appellate processes of certain European countries. For those responsible for the care of children – usually women – such conditions can leave them vulnerable to exploitation and abuse.

46. 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. This can create an extra level of dependency.

ECRE therefore calls for information and advisory 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 sexual and racial discrimination, social assistance, employment and trade unions, marriage, health and domestic violence.

47. In planning to meet the needs of refugee women, the following are points of good practice:

- Women should be represented among the refugees who are consulted at every stage of policy and programme planning (by NGOs, by State authorities, by UNHCR or by other inter-governmental agencies);
- Opportunities should be created for women-only space in discussions and interviews;
- All available methods of communication (eg - audio, video) should be used to ensure refugee women understand the options available to them and can make their own choices;
- Female interpreters should be used wherever possible;
- Refugee-assisting NGOs should aim to employ refugee women among their own staff.

48. Efforts within individual households and communities to resolve gender-related problems require the active support of both non-governmental organisations and State authorities. Agencies experienced in offering specialist support to women should be invited to co-operate with refugee-assisting agencies in order to strengthen the capacity of both men and women to cope with issues arising from, for example, the alteration of gender relations in the host society.

health

49. Refugee and asylum seeking women should have access to health care (including care for both urgent and chronic needs) and should be informed of the availability of these services in the most effective way. It should be noted that in many communities women play a central role in providing other family members with health care; therefore access to health care for women can be broadly beneficial to the health of refugee communities.

50. Asylum seeking and refugee women should have the opportunity to be attended by female medical professionals if they wish (including where medical services are provided in a reception centre or place of detention).

51. Care should be taken to explain to women their choices concerning reproductive health and family planning, including information on the services available and the laws relating to abortion.

52. Additional psychological and physical care for survivors of trauma should be provided, including counselling services for families as a whole where this is requested.

training, education and employment

53. Refugee and asylum seeking women should be consulted by NGOs and by the authorities on the development of all training and education programmes, or income generation projects, which are intended to meet their needs. Refugee women frequently come from backgrounds where they have been economically active in the family and in the community and therefore it is essential that their skills and knowledge are recognised, developed through further training and education, and utilised to their full potential.

54. Child-care facilities should be provided and the issue of women's mobility/ access to transport addressed as a means of increasing women's participation in programmes and utilisation of mainstream services.

voluntary return

55. The extent to which a refugee's return to her country of origin is 'voluntary' may be affected by her gender and it is essential that the views of each member of a family are obtained to ensure that return is truly voluntary.

56. Problems arise where a woman is dependent upon a male family member for her legal status in the host country, and he takes the decision to return and thus to forfeit her refugee status along with his own. It is also important that women who wish to divorce can do so without fear of loss of refugee status. Therefore ECRE recommends that women should always be given an independent secure status and their own set of documentation following recognition of a family asylum claim¹¹.

57. Visits to countries of origin are sometimes arranged, by NGOs or the asylum State, for refugee leaders to assist members of a community in deciding whether to return. These visits should also include women. Similarly, in countries of asylum, women should be given equal access to information about the possibilities for return and conditions in the country of origin.

58. Separate identity and travel documents for each adult in the family should be provided during the process of voluntary return, and physical protection should be provided for unaccompanied women throughout the process of return.

59. The critical role which women's fora often play in reconciliation and peace-building in post-conflict situations should be specifically recognised and supported by international humanitarian agencies, and their role in economic reconstruction encouraged by the availability, where appropriate, of micro-credit initiatives addressed to their needs.

statistics

60. Data related to the national asylum systems – including recognition rates, figures for resettlement from overseas, detention and return statistics – should always be disaggregated according to gender (and age) in order to highlight the situation of refugee women and girls for the information of policy makers.

ANNEX : Relevant International Instruments

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- 1951 Convention Relating to the Status of Refugees and the 1967 Protocol
- 1949 Geneva Conventions on the Laws of War and the two Additional Protocols of 1977
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)
- UN Declaration on the Elimination of Violence Against Women (1993)
- Convention on the Rights of the Child (1989)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)