



## Double standards facing women seeking asylum in Europe

Asylum Aid Briefing Paper  
January 2016

### Summary

Women seeking asylum in Europe face double standards. Measures for victims of sexual violence in conflict and victims of crime are not guaranteed to victims of the same sexual violence seeking asylum in the UK. Yet these measures would enhance credibility assessments. Credibility assessments have a disproportionate effect on women's asylum claims particularly those based on gender-related persecution. Implementing these measures is therefore particularly important.

We recommend:

- women seeking asylum are provided with relevant information; female interviewers, decision makers and interpreters trained on issues relating to sexual violence and trauma; childcare and counselling.
- double standards are replaced by comparable standards.
- a culture of disbelief is replaced by an assumption of belief and a culture of protection.

### Introduction

When women seek asylum in Europe, they face double standards that can prevent them from obtaining a fair credibility assessment. Standards provided in international humanitarian or in national criminal justice systems are not granted to women seeking asylum. This failure denies women measures that would enhance the credibility assessment of their asylum claims.

#### 1. International standards

- i. A number of members of the Council of Europe have not only signed but also [ratified](#) the *Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* which came into force in August 2014. The Istanbul Convention is the first international instrument that makes the connection between the issue of violence against women and the protection of women seeking asylum. It states that in promoting and protecting women to live free from violence in the public and private sphere and condemning discrimination, states should provide such protection without discrimination on any grounds, including "migrant or refugee status, or other status".

Indeed the Istanbul Convention has two articles specifically about the rights of women seeking asylum. Article 60 focuses on gender-based asylum claims. Article 60(2) requires that the reason for persecution (the Convention Ground) is interpreted in a gender-sensitive way. Article 60(3) requires Parties to provide gender-sensitive reception conditions, support services and asylum procedures. Article 61 reiterates the principle of *non-refoulement* already in the [Refugee Convention](#).

- i. In addition, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* ([GR32 CEDAW](#)) published by the UN Committee on the Elimination of Discrimination Against Women ([CEDAW](#)) in November 2014 also makes the link between violence against women and asylum. It lists a range of measures that ratifying states (including the UK) are obliged to provide to women when claiming asylum. This includes information, trained interviewers and decision makers, the right to a female interviewer on request, childcare and counselling.
- ii. The Global Summit on Preventing Sexual Violence in Conflict held in London in June 2014 resulted in the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* (the [International Protocol](#)). This details how cases of sexual violence in conflict should be dealt with and many member states as well as the [EU](#) have signed up to it. It focuses on a multi-sectoral response linking medical, law enforcement, psychosocial/mental health and legal/judicial factors.
- iii. The *European Union Directive on establishing minimum standards on the rights, support and protection of victims of crime* ([Victims' Directive](#)) came into force on 16<sup>th</sup> November 2015. The Victims' Directive states that rights must be applied to victims of crime "in a non-discriminatory manner, including with respect to their residence status". Whilst the Victims' Directive focuses on provision for victims where the crime is committed in an EU member state, it is possible to make a read-across to victims of similar crimes in non-EU countries who claim asylum in EU countries. It covers a range of measures that are relevant for women claiming asylum such as providing information, counselling, protection against risk of emotional and psychological harm and the right to have your interview conducted by one person and by a person of same sex if you are a survivor of gender-based violence.

## 2. Double standards

Set against these international standards there is a disparity in the treatment of women who are settled either in or outside Europe and those women travelling to Europe to seek asylum.

While the circumstances of the women may be different, there are clear parallels to be drawn. This disparity is particularly clear when considering:

- Women fleeing sexual violence seeking protection in Europe are not granted the same rights as victims of sexual violence as detailed in the *International Protocol*, the *Victims' Directive* and *GR32 CEDAW*.
- Women fleeing gender-based persecution are not granted the same rights as women born or settled in Europe who are victims of similar crimes and seek protection from the police and prosecution services (eg an assumption of belief, female officers).

- Women and girls fleeing FGM and forced marriage are not granted the same rights as women and girls at risk of FGM and forced marriage in Europe (eg laws against FGM and/or forced marriage, policies to protect girls taken abroad).

The same standards should apply to women fleeing sexual violence and seeking protection in Europe as to survivors of sexual conflict who remain in their countries of origin. Women and girls fleeing FGM or forced marriage should be granted the same rights as women and girls settled in Europe who are at risk of FGM or forced marriage.

Mechanisms need to be put in place to ensure that the support and protection provided for women under the conventions and protocols detailed above are also provided for women seeking protection in Europe from human rights abuses abroad.

### 3. Failures in credibility assessment

The assessment of credibility (whether an asylum applicant is believed or not) is the key concern in the refugee status determination of women's asylum claims.

[UNHCR's research](#) on credibility assessment in Europe demonstrates variations apparent in all aspects of the credibility assessment.

The key research finding in the [Gensen report](#), a comparative analysis of gender-related claims in Europe published by the European Parliament in 2012, was that the assessment of credibility was often at the core of asylum refusals in women's cases.

This echoes Asylum Aid's [finding](#) that credibility is at the core of asylum decision making in women's asylum claims in the UK.

... appeal determinations always included a reference to the standard of proof being low and quoting the standard of reasonable likelihood or real risk. The focus in the majority of the Tribunal's determinations where the appeal was allowed was on future risk rather than on past persecution. Other determinations by the Tribunal where the credibility findings were reversed suggested that [decision-makers] often took an approach based on a close examination of very particular details, rather than looking at a claim as a whole and considering whether the applicant had been consistent in the core matters.<sup>1</sup>

### 4. Factors affecting credibility assessment

Three interrelated factors have been identified as having a major impact on credibility assessments for women seeking asylum:

- The misapplication of the standard of proof,
- The availability of corroborative evidence and
- The impact of shame and trauma on disclosure<sup>2</sup>

These factors are evidenced in the research referred to above. They interact as follows:

---

<sup>1</sup> Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, Asylum Aid 2011, 54)

<sup>2</sup> Singer, D (2014) *Falling at each hurdle – assessing the credibility of women's asylum claims in Europe* in Arbel, E. et al (eds) *Gender in Refugee Law: From the Margins to the Centre*, Routledge, Abingdon pp 98 - 115

i. Standard of proof

The standard of proof in the examination of all asylum claims is that of ‘reasonable degree of likelihood’ or ‘real risk’. As noted in [UNHCR’s report](#), the evidentiary rules that apply to civil and criminal law are frequently inadequate or inappropriate for the credibility assessment in the asylum procedure. This lower standard of proof is adopted in asylum law to seek to compensate for the evidential difficulties associated with proving past persecution and the implications of getting the decision wrong.

In practice, however, decision-makers are misapplying the standard of proof to impose on those seeking protection a standard that is much harder to meet than that which is required by refugee status determination procedures. The Gensen report found that the standard of proof used for women’s asylum claims was generally high. Applying the standard of proof too rigorously affects women disproportionately because they are less likely to have evidence to corroborate their claims.

ii. Corroborative evidence

Even though decision-makers are not required to obtain documentary evidence to support asylum applicants’ claims, the Gensen report found that the tendency is to rely on such evidence. This has a disproportionate impact on women who may not have access to such evidence. This lack of evidence may be due to their political, social, or economic status in their country of origin or because of the nature of the persecution they have experienced. Gender-based harm such as rape, sexual assault, domestic violence, forced marriage, female genital mutilation or threats of honour crimes are unlikely to have documentary evidence associated with them.

iii. Oral testimony

This absence of evidence means that the applicant is forced to rely more on their own oral testimony. Here again, women can be disadvantaged. The shame and trauma that they have experienced as a result of gender-based violence may affect their memory, resulting in their evidence being less clear and consistent. Such shame and trauma may prevent them from disclosing their story at all, or in a complete and coherent way. Trauma among survivors of sexual violence is known to affect the coherence of later accounts.

In addition shame and trauma can result in late disclosure of gender-related persecution. The Gensen research found that such late disclosure did not necessarily have a negative impact on the assessment of credibility. However, inconsistencies in asylum seekers’ claims may result in negative credibility findings.

The misapplication of the standard of proof, the lack of corroborative evidence and the weight given to this, and the impact of shame and trauma on disclosure don’t just interact. They exacerbate and compound each other. This explains why women are disproportionately affected in credibility assessments.<sup>3</sup>

## 5. Comparable standards

The [Charter of Rights of Women Seeking Asylum](#) (a coalition of 365 organisations) has been running a [campaign](#) since December 2014 recommending the Home Office ensure that

---

<sup>3</sup> Singer, D (2014) Falling at each hurdle – assessing the credibility of women’s asylum claims in Europe in Arbel, E. et al (eds) Gender in Refugee Law: From the Margins to the Centre, Routledge, Abingdon pp 98 - 115

asylum standards are equal to the standards set out in the *International Protocol*, the *Victims' Directive* and *GR32 CEDAW*. The Protection Gap campaign demands the Home Office:

- guarantee that women can have a female interviewer and interpreter if they choose
- provide childcare during screening and asylum interview
- provide training for interviewers and interpreters on sexual violence, trauma and memory
- provide counselling and support for trauma for women who have experienced gender-based harm
- provide information about the asylum process, rights and entitlements specific to women seeking asylum.

The Gensen report found the following evidence in relation to these recommendations:

- While all EU member states provide female asylum interviewers on request, only a few systematically ask women for their preference.
- Childcare during interviews is provided only in Belgium and in parts of the UK leaving women to choose between withholding important information and disclosing traumatic details in front of their children.
- Belgium was found to be the only member state that provided information specifically relevant to women's rights.
- Very few member states had gender-specific training for decision-makers or judges and it was seldom mandatory. However, as a result of the Gensen report and the [Engendering EASO campaign](#), the European Asylum Support Office (EASO) developed a training module on *Gender, Gender Identity And Sexual Orientation* (December 2014).

As a result of the campaign to close the Protection Gap, the Home Office included these measures in its Gender Asylum Action Plan in March 2015 and is making some progress on these.

If implemented each of these measures would enhance credibility assessment and make it more likely that initial asylum decisions were right first time.

## Conclusion

There has been significant movement recently in recognising the need to tackle sexual violence in conflict countries. However, when women and girls from those countries seek refuge in Europe as a result of that violence they encounter serious barriers. The gender analysis applied overseas is not applied in asylum policy. Similarly rights under the *Victims' Directive* and the criminal justice system's learning regarding the importance of believing victims of sexual violence has not been transferred to the asylum system.

These double standards have a particular impact on the key problem women seeking asylum encounter in the refugee status determination system: negative credibility assessment. These double standards result in the failure to provide measures that would help a woman tell her narrative coherently and improve credibility assessment for women seeking protection in Europe from human rights abuses.

Double standards need to be replaced by comparable standards.

A culture of disbelief needs to be replaced by an assumption of belief and a culture of protection.

© Asylum Aid 2016