



WOMEN AND GIRLS IN REFUGEE SETTINGS

Women's Rights Team – Report April 2023



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Author:
Elias Tissandier-Nasom

TABLE OF CONTENTS

Sr. No.	Topic	Page No.
1.	Introduction	1
2.	Country Profile	2
3.	Women's Rights	3
4.	Children's rights	4
5.	Religious and Gender Minorities	6
6.	Looking Forward	8
7.	Conclusion	9
8.	Bibliography	10

INTRODUCTION

The 1951 UN Refugee Convention, the first international legal document relating to asylum and migration, provides for a definition of what a refugee ought to be. Interestingly enough, this definition is defined in the masculine as a person who, “owing to 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, is 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.”¹ While the inclusion of the term ‘sex’ was discussed in the list of grounds for non-discrimination in Article 3 of the Convention, the delegates decided against it as, like pointed out by the British delegate at the time, “the equality of the sexes was a matter for national legislation”² and the inclusion of gender might not coincide with national legislations.³ This was further underlined by the UN High Commissioner for Refugee at the time, Van Heuven Goedhart, who pointed that the inclusion of sex/gender in the discriminatory grounds was not necessarily as he “doubted strongly whether there would be any cases of persecution on account of sex”.⁴

This absence of gender approach in the asylum framework was a large miscalculation on the part of the delegates as it has been largely shown since that women and girls face disproportionate struggles in seeking asylum. However, the mention of the specific struggle faced by women and girls in refugee settings was only brought up decades later thanks to the work of NGOs and academics in the late 1980s, early 1990s.⁵ They pointed out that, although no one argued that women could be refugees, the definition was applied in a way that ignored some of the persecution faced by women. Spijkerboer notes for instance the common rejection of sexual violence as a ground for persecution as it was defined as a private act. Similarly, issues of gender discrimination, even if brought up a level of harm severe enough to amount to persecution in the sense of the Convention, were often just sent back as an issue of national sovereignty.⁶ This grassroots work allowed for a change of perspective at the UN level, focusing the 1995 UNHCR’s calendar on refugee women which led to the organization of multiple conferences on the topic as well as the publication of conclusions⁷ and guidelines⁸. The European Asylum system, in copying the UN’s asylum policies down the line added the mention of gender and gender sensitive language to its documents, particularly the Qualification Directive which define the

1 United Nations, *Convention and Protocol relating to the Status of Refugees*, 1951, Article 1 A(2).

2 United Nations, *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons : summary record of the 29th meeting, held at the Palais des Nations, Geneva, on Thursday 19 July 1951*, (A/CONF.2/SR.5), [New York] : UN, 28 Nov. 1951, <https://digitallibrary.un.org/record/696452>, p. 9.

3 Spijkerboer, T. (2000). *Gender and Refugee Status*, Ashgate, Aldershot, ISBN 0 7546 2034 4, p. 1-2.

4 UN Document A/CONF.2/SR.5, p. 10.

5 *Supra n*^o3, p. 3; see for instance, Hathaway, J.C., Foster, M. (1991), *the Law of Refugee Status*. Cambridge University Press, https://assets.cambridge.org/97811070/12516/frontmatter/9781107012516_frontmatter.pdf

6 *Idem*.

7 Conclusion 39 (XXXIX, 1988), *Refugee Women and International Protection*; Conclusion 54 (XXXIX, 1988), *Refugee Women*; Conclusion 60 (XL), 1989), *Refugee Women*; Conclusion 64 (XLI, 1990), *Refugee Women and International Protection*; Conclusion 73 (XLIV, 1993), *Refugee Protection and sexual violence*.

8 United Nations High Commissioner on Refugees (UNHCR)(1991). *Guidelines on the protection of refugee women*, Geneva.; United Nations High Commissioner on Refugees (UNHCR)(1995). “Sexual Violence against refugees: Guidelines on prevention and response”, *International Journal for Refugee Law*, vol. 7, pp. 270-55.

grounds receivable for asylum to be granted. Through the work of UN Women and CEDAW⁹, the UN has also now caught up on the inclusion of women and girls as a particular social group and of gender as a ground for persecution.¹⁰ However, there is still immense work to be done in reporting, defining and effectively responding to the harm faced by refugee women and girls around the globe.

It is in this context that this report will dwell into the gender specific harm suffered by women and girls in refugee settings. To do so, it will follow the chronological journey of asylum seekers, highlighting at every step of this process the gender specific hardships. In this sense, it will first look at (1) the causes of flight and displacement, before looking at (2) the experience of the refugee journey for women and girls, (3) the reception conditions and the life of women and girls in refugee camps. Finally, it will highlight (4) the particular obstacles that LGBTQIA+ women have to overcome in the qualification process.

⁹ See for instance: UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>

¹⁰ *Supra n°9*, para. 13: “Gender-related persecution is absent from the text. The present general recommendation is intended to ensure that States parties apply a gender perspective when interpreting all five grounds, use gender as a factor in recognizing membership of a particular social group for purposes of granting refugee status under the 1951 Convention and further introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers.”

FLIGHT AND FORCED MIGRATION: WHY WOMEN AND GIRLS SEEK REFUGE

There are various reasons for which women and girls may flee or be forced to leave their home. Any serious violation of human rights and acts of gender-related persecution can be grounds for international protection. The General Recommendations of the CEDAW on the matter establish a non-exhaustive list of instances that might lead to the successful obtention of refugee status for women and girls. It lists: the “threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called “honour crimes”, trafficking in women, acid attacks, rape and other forms of sexual assault, serious forms of domestic violence, the imposition of the death penalty or other physical punishments existing in discriminatory justice systems, forced sterilization, political or religious persecution for holding feminist or other views and the persecutory consequences of failing to conform to gender-prescribed social norms and mores or for claiming their rights under the Convention.”¹¹ These are forms of persecution and violence that are specifically aimed at women and girls for the reason of their gender.

A particular setting in which women and girls are particularly vulnerable to be compelled to flee their home country is armed conflicts. War has a devastating impact on women and girls particularly. This is in part due to the fact that women and girls are already discriminated against and treated as second-class citizens in times of peace, thereby leaving them with no means to cope with the consequences of war when conflict arises.¹² In addition, women and children constitute the largest part of civilian casualties in armed conflicts.¹³ Moreover, women and girls are disproportionately impacted by the armed conflict in a broader sense. The International Committee of the Red Cross and the Red Crescent points out that women and girls are often more impacted by malnutrition, particularly if they are pregnant and need higher levels of vitamins and minerals, leaving their health situation critical.¹⁴

The decision to flee in times of armed conflict is imposed on women through two dynamics. In a lot of cases, women and girls are not consulted in the decision to flee and are forced to follow their family. In other cases, they are forced to leave by acts of extreme gender-based violence and intimidation. The practice of forced eviction in that sense has been defined as a “gross violation of human rights, in particular the right to housing”¹⁵ by the United Nations and is increasingly being recognized as a weapon of war. Indeed, armed forces are using intimidation, threats and often sexual and physical violence to force women out of their homes. Because women and girls are often in charge of taking care of the home, they are on the front line, and often the only ones able to, fight against the eviction and are thus largely targeted and impacted by such acts. Forced evictions allow armed forces to take control of territory. However, it is also often coupled with the control of women’s bodies. Following patriarchal ideas of the role of women, they are often raped and forced to carry out pregnancies and give birth to ‘enemy blood’. In such occurrences, forced evictions and rape as a weapon of war can

11 *Supra n*^o9, para. 15.

12 United Nations Security Council, Report of the Secretary-General on women, peace and security, 16 October 2002, S/2002/1154, para. 5 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/634/68/PDF/N0263468.pdf?OpenElement>

13 United Nations Department of Public Information (1996), Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, para. 135.

14 Lindsey, C. (2001, October). *Women facing War*, ICRC, p. 28-30, https://www.icrc.org/en/doc/assets/files/other/icrc_002_0798_women_facing_war.pdf

15 United Nations, Resolution 1993/77 on forced evictions, 10 March 1993.

be considered to be used for the purpose of ethnic cleansing. Altogether, forced evictions constitute a violation of multiple human rights, the UN Committee on Economic, Social and Cultural rights published a General Comment on the matter that highlights that evictions should be carried out in a very strict and protective manner, only in last resort and allowing for compensation for the evicted persons. Additionally, it underlines that no one should be left homeless or vulnerable to further human rights violations due to an eviction.¹⁶ The standards to be upheld during evictions have been further developed by the UN Special Rapporteur on adequate housing in 2007 in the “Basic principles and guidelines on development-based evictions and displacement”.¹⁷ The “Guidelines for the implementation of the right to adequate housing (2020)” of the Human Rights Council have also established more recent and accurate guidelines noting that forced evictions should be prohibited in all circumstances and highlighting the gender-based violence often at play.¹⁸ In light of the widespread character of the practice of forced evictions, particularly in armed conflicts, and the severe impact it has on women’s health and human rights, it is fundamental to mark it as one of the main issues faced by women and girls that may lead to forced migration.

Another issue at play in the forced flight of women and girls here is the link to the sexual and reproductive violence often aimed at them. The main act in that regard is rape, which has been defined as a weapon of war in some instances. However, sexual and reproductive violence does not stop at acts of rape and sexual abuse but also includes forced pregnancies or abortions and more.

Another form of grave violence committed against girls is the practice of Female Genital Mutilation (FGM). According to the World Health Organisation, FGM includes “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons”.¹⁹ Such practices have dire effects on the health of women and girls and constitute a violation of their bodily integrity giving rise to a need for migration and international protection.

Finally, it is necessary to add that some instances of displacement are due to natural disasters. While such destruction does not discriminate or target women and girls directly more prevalently than others, there is clear evidence that women and girls are more severely impacted. Once again, this is due to underlying gender inequalities which leave women with less access to resources. In cases of natural disasters, this often means a severe lack of timely access to information and resources which results in higher death rates for women and girls compared to men and boys.²⁰

Altogether, the protection of women’s rights under international law is part of the obligation of states, notably under the United Nations’ system. Such protections should be upheld both in times of peace

16 United Nations Committee on Economic, Social and Cultural Rights, “General Comment n°7: the right to adequate housing (art. 11 of the Covenant): forced evictions”, 1997.

17 United Nations Special Rapporteur on adequate housing, “Basic principles and guidelines on development-based evictions and displacement”, 5 February 2007, A/HRC/4/18 Annex 1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>

18 United Nations Human Rights Council, “Guidelines for the Implementation of the Right to Adequate Housing”, 26 December 2019, A/HRC/43/43, para. 34-38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>

19 World Health Organization: WHO. (2023, January 31). *Female genital mutilation*. <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

20 *Women and Girls in Disasters* (2022, April 20). Center for Disaster Philanthropy. <https://disasterphilanthropy.org/resources/women-and-girls-in-disasters/>

and war. In this sense, it is fundamental to recognize that “displacement arising from armed conflict, gender-related persecution and other serious human rights violations that affect women compounds existing challenges to the elimination of discrimination against women”.²¹ In this sense, to reduce the instances in which women and girls are forced to flee, it is necessary to start at the root and work towards bettering the protection of women and their equal access to rights and liberties in times of peace.

²¹ *Supra* n° 9, para. 14.

REFUGEE JOURNEY: FLEEING AS A WOMAN OR A GIRL

For most women who flee their country, the violence does not stop at the border of their home state. Indeed, forms of gender-based violence extend from the country of departure, during the journey and upon arrival in the host country. This is slowly being recognized by international law and international human rights bodies. For instance, we note the 2022 Recommendations of the Council of Europe to its member states on “protecting the rights of migrants, refugees and asylum seeking women and girls.”²² This document provides a large overview of the relevant international and European law standards relating to women and girls in migration settings. It particularly points to the importance of working to prevent hate speech and sexism, sexual exploitation, trafficking in human beings targeting women and girls on their refugee journey.²³ Altogether, international bodies are slowly putting forward the importance of taking a gender-sensitive approach to the question of migration. In this sense, UN Women has developed a Guide on the policies and practices to adopt to ensure a “gender-responsive implementation of the global compact for migration”.²⁴ UN Women defines “gender-responsive migration governance” as the “importance of laws, policies and programmes recognizing and addressing the different experiences, needs and vulnerabilities faced by women, men, girls, boys and gender non-conforming migrants at all stages of migration while upholding their human rights, promoting their empowerment and advancing gender equality”.²⁵

Based on this gender-responsive approach, it appears clear that, if migration can create vulnerability to violence and rights violations for all, there is a specific need to address the harm suffered by women and girls while fleeing their home country for their very identity as women and girls. If international documents on the matter can provide for an overview of the policies and practices put in place by states to protect women and counter such risks, it is fundamental to take a grass root approach to this issue. Testimonies of women and girls about the hardship and violence they faced during their flight are numerous. Based on interviews of 40 women who travelled out of Syria and Iraq to Europe, Amnesty International reports that “all the women described feeling threatened and unsafe during the journey. Many reported that in almost all of the countries they passed through they experienced physical abuse and financial exploitation, being groped or pressured to have sex by smugglers, security staff or other refugees”.²⁶

The largest issues faced by women and girls during their migration journey can be separated in three

22 Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, 2022, accessed at <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>

23 *Ibid*, para 31-42.

24 Von Hase, I., Stewart-Evans, M., (2021) “Policies and Practice: a Guide to Gender-Responsive Implementation of the Global Compact for Migration”, *UN Women*, accessed at <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>

25 *Ibid*, p. 3.

The document also specifies : “Gender non-confirming is behaviour or appearance that is not in alignment with prevailing cultural expectations related to a particular gender. Cisgender refers to a person whose gender identity and the sex they were assigned at birth align. Trans/transgender is a term used by some people whose gender identity differs from what is typically associated with the sex they were assigned at birth.”

26 Amnesty International. (2021, August 16). *Female refugees face physical assault, exploitation and sexual harassment on their journey through Europe*. <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>

categories: discrimination and intimidation, sexual exploitation and forced prostitution and trafficking in human beings. Those forms of harm are interconnected and, in practice, often overlapping. It is fundamental to note that the forms of violence faced by women and girls during their migration journey, and for that matter at all points of their migration, are aggravated forms of the violence and harm women and girls face everywhere at all times due to their increased vulnerability in such a situation.

Instances of discrimination or intimidation during the refugee journey of women and girls can take the form of hate speech and sexism which can lead to psychological trauma, health deterioration or physical harm.²⁷ This can arise from violent discriminatory acts by any person women and girls may come in contact with during their flight, from border authorities to other refugees with whom they share the journey.

Sexual exploitation and forced prostitution of refugee women is one of the largest concerns when talking about the protection of women and girls in migration settings. Depending on the practices, this may often also amount to trafficking. UN Women highlights that 83% of women and 72% of girls who are victims of human trafficking were trafficked for sexual exploitation purposes.²⁸ Before diving into the details of the rights violations and violence suffered by women and girls in such instances, it is necessary to note that trafficking for sexual exploitation purposes can be the result of two situations. On the one hand, some women and girls may be trafficked into forced prostitution and, as a consequence, be forced to migrate. On the other hands, women and girls who have already initiated the migration process, may have no other choice but to practice sex work in order to provide for themselves during the journey, often leading to exploitation and forced prostitution. In this report, we will only be considering the second scenario in order to highlight the risks linked to human trafficking and sexual exploitation in taking a gender-sensitive approach to human rights violation in migration settings.

Trafficking is defined by the United Nations Drug and Crime Office as the “recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit. Men, women and children of all ages and from all backgrounds can become victims of this crime, which occurs in every region of the world. The traffickers often use violence or fraudulent employment agencies and fake promises of education and job opportunities to trick and coerce their victims.”²⁹ In addition, the European Institute for Gender Equality defined forced prostitution as a ‘form of slavery incompatible with human dignity and fundamental human rights’.³⁰

Women are disproportionately impacted by poverty. Some reports go as high as stating that 70% of the absolute poor population in the day are women and their children.³¹ This s

27 *Women refugees and migrants*. (n.d.). UN Women – Europe and Central Asia. <https://eca.unwomen.org/en/news/in-focus/women-refugees-and-migrants-0>

28 Von Hase, I., Stewart-Evans, M., (2021) “Policies and Practice: a Guide to Gender-Responsive Implementation of the Global Compact for Migration”, *UN Women*, accessed at <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>, p. 29.

29 *Human-Trafficking*. (n.d.). United Nations : Office on Drugs and Crime. <https://www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html>

30 *forced prostitution*. (n.d.). European Institute for Gender Equality. <https://eige.europa.eu/thesaurus/terms/1138>

31 European Women’s Lobby (2001). *Migration, trafficking and social development, what is at stake for women*. Brussels, Belgium.

terms with smugglers leading to a large financial exploitation of women and girls at all stages of their journey.³² This in itself renders women and girls largely more vulnerable to exploitation by traffickers. Indeed, women and girls may be more inclined to accept an offer – not necessarily knowing the full extent of the situation in which they are entering themselves – in exchange for financial resources that would allow them to support themselves and their families through the hardship of migration. Such offers can take the form of smugglers requiring sexual favours when women do not have the resources to pay for their journey as testified about by women refugees interviewed by Amnesty International.³³ Without knowledge, women may accept such offers from smugglers and be swept into trafficking systems where they face further sexual exploitation, rape and sexual abuse, are separated from their family and forced to migrate by the trafficker.

The economic and financial incentive to participate in sexual acts in exchange for money and services, or often simply to be able to continue their journey out of a situation of severe harm and violence, is at the root of a lot of trafficking and sexual exploitation cases. This has been recognized by international bodies working on the issue of trafficking in human beings. We note, for instance, that the UN Committee on the Eradication of Discrimination Against Women (CEDAW) recommended that states work towards the full achievement of gender equality and the Sustainable Development Goals in order to reduce the root causes of trafficking in women and girls, including sexual exploitation.³⁴

32 Shearer Demir, J. (2003). *TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION: A GENDER-BASED WELL-FOUNDED FEAR? An examination of refugee status determination for trafficked prostituted women from CEE/CIS countries to Western Europe*. Tufts University. <https://sites.tufts.edu/jha/files/2011/04/a115.pdf>

33 Amnesty International. (2021, August 16). *Female refugees face physical assault, exploitation and sexual harassment on their journey through Europe*. <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>

34 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration*, 20 November 2020, available at: <https://www.refworld.org/docid/6006fa354.html>

RECEPTION CONDITIONS: LIFE IN A REFUGEE CAMPS FOR WOMEN AND GIRLS

Similarly to forms of violence and harm faced by women and girls during their journey, the forms of violence they face upon arrival in refugee and transit camps can be considered an exacerbation of the forms of harm suffered by women everywhere at all times. Because of the often lawless environment in camps due to the lack of security and protection provided by the authorities running the camps, instances of gender-based violence are even more prevalent. Perpetrators can be asylum officers just as well as other refugees in the camp.

Studies have shown that women and girls refugees are more at risk of sexual violence than any other women and girls in the world.³⁵ In refugee camps, women and girls are provided very little protection against sexual violence and abuses. In this sense, camps can be considered “unstable environments where altered economic and social factors aggravate women’s existing cultural vulnerabilities to sexual exploitation”.³⁶ In this context, many instances of gender-based and sexual violence against women and girls may happen within the refugee population in the camp. In the absence of real control or punishment by camp authorities, cycles of violence get rooted into the camp’s society, further the oppression and harm of women and girls. For this reason, women and girls may be pushed to leave the camp premises to reach resources, if not made to do so by men and boys. Leaving the confines of the camp has been proven to be a direly dangerous enterprise for women and girls, with increased risk of sexual violence. Moreover, women and girls may be exposed to further sexual violence when they are unnecessarily detained and refused information regarding their situation and rights.³⁷ In this sense, it is fundamental to note that sexual violence against women and girls in refugee camps is not confined to the refugee community. Such violent acts are often perpetrated by the camp authority officers, taking advantage of their power and influence over women and girls trying to find their way through the refugee journey. In addition, police may receive bribes not to investigate claims of sexual violence or release perpetrators.³⁸

The organisation of the camp itself may be a conducive factor to an increase in sexual violence against women and girls as well. Many camps lack electricity and therefore are often left in the dark, particularly at night. Washing and bathroom facilities may be far from living areas, making the trip dangerous. Additionally, sanitary facilities are often mixed. The overcrowding of refugee camps accentuates those issues by adding stressors on both the population and the available resources.

Sexual violence has dreadful consequences on the life of women both in terms of health (physical and psychological) and of social integration. In terms of health, sexual violence and rape may induce HIV/AIDS infection, pregnancy, miscarriage, severe pain and psychological trauma leading to anxiety,

35 Refugee Council (2009). “The Vulnerable Women’s Project, Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence, Literature Review”, Vulnerable Women’s Project, London.

36 Farmer, A. (2006). “Refugee responses, state-like behavior, and accountability for human rights violations: a case study of sexual violence in Guinea’s refugee camps”, 9(1) *Yale Human Rights and Development Law Journal*, p. 44.
Donnelly, E. R., & Muthiah, V. (2019). *Protection Women and Girls in Refugee Camps - State Obligations under International Law*. Center for Women, Peace and Security - London School of Economics and Political Science. https://eprints.lse.ac.uk/110299/1/Muthiah_protecting_women_and_girls_published.pdf, p. 27.

37 *Women Refugees at Risk in Europe*. (2016) Nobel Women’s Initiative.

38 United Nations’ High Commissioner for Refugees. (1995). *Sexual Violence Against Refugees - Guidelines on Prevention and Response*. <https://www.refworld.org/pdfid/3ae6b33e0.pdf>, p. 10.

depression, self-harm and post-traumatic stress disorder. It might also affect women and girls' sense of self-worth. In addition to this, sexual violence may lead to the rejection of the victim by her partner, family and social circles. This marginalisation and shaming may lead to further sexual violence and exploitation.³⁹

Aside from sexual and gender-based violence, women and girls are often at risk of increased health complications during their stay in refugee camps. In camps like in many other contexts, women and girls are often put in charge of finding food and resources for the rest of the group's survival. In doing so, they are often left last in the feeding hierarchy and are likely to suffer from anemia and other physical deficiencies. Health and care services are severely lacking in refugee camps and women and girls are the first to pay that burden, sometimes with their lives. The disheartening lack of hygiene in the camp is often conducive of infections and diseases. This is also the case of sexually transmitted diseases including HIV/AIDS that are spread due to the absence of access to contraceptives as well as the widespread sexual violence, rape and abuses of women and girls. Such unhygienic conditions and infections can lead to sepsis and other infections of the bloodstreams which is the cause of 15% of maternal deaths.⁴⁰ The absence of access to safe abortion is also a large cause of maternal death. The World Health Organisation estimates that complications arising from unsafe abortion practices are the cause of 25% to 50% of maternal deaths among refugee women and girls.⁴¹ Finally, even when services are available, women are very unlikely to know how to access them due to the lack of information and prevention among the refugee population and within camps themselves.

A recent development that needs to be noted in the severe increase of instances of gender based violence targeting women and girls in refugee camps due to the COVID-19 pandemic. Because of the need for strict hygiene practices, women and particularly young girls, have been forced to collect water more often. In a report of 2019, the International Rescue Committee highlights that "Of those surveyed, 31% reported harassment and sexual violence on the way to water points and 21% reported harassment upon arrival. In addition, women and girls reported multiple instances of men perpetrating emotional and physical violence against their partners when asked to comply with COVID-19 prevention measures. When asked about the reasons why survivors would choose not to seek help, 56% of women named the fear of being identified as a survivor of Gender-Based Violence (GBV) and the related stigma. This fear was further exacerbated by movement restrictions and monitoring at checkpoints".⁴² Gender-based violence, and particularly domestic violence, was drastically increased during COVID-19 lockdown procedures due to the fact that women and girls were stuck inside the home with their aggressors,⁴³ this is true of the situation of women and girls living in refugee camps as well.

39 United Nations' High Commissioner for Refugees. (1995). *Sexual Violence Against Refugees - Guidelines on Prevention and Response*. <https://www.refworld.org/pdfid/3ae6b33e0.pdf>

40 Murray, A. (2013). Women caught in conflict or refugee situations. In *From Outrage to Courage: The Unjust and Unhealthy Situation of Women in Poorer Countries and What They are Doing About It* (2nd ed., p. Common Courage Press), p. 175.

41 *Ibid.*

42 International Rescue Committee & Irish Aid. (2019). *Strengthening prevention and response to gender based violence in emergencies and protracted humanitarian crises*. <https://www.irishaid.ie/news-publications/news/newsarchive/2019/may/irish-aid-strategic-partnership-with-the-international-rescue-committee.html>

43 *The Shadow Pandemic: Violence against women during COVID-19*. (n.d.). UN Women – Headquarters. <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>

QUALIFICATION AS A REFUGEE: THE SPECIFIC HARDSHIP FACED BY LGBTQIA+ WOMEN

Once arrived in the country of destination, asylum seekers have to file an asylum request with the proper authorities. During this process, the migration officer will have to determine if the individual indeed qualifies for international protection: this process is called the qualification. It is governed by multiple international legal documents. The United Nations' Refugee Convention of 1951 is the document of reference in that matter, it was translated into the European regional framework into the Qualification Directive.⁴⁴ Article 1 of the Refugee Convention and Article 2(d) of the Qualification Directive define the criteria to qualify for refugee status under the UN and European frameworks: "well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country".⁴⁵ Following this, migration officers must establish four points: the individual has a *well-founded fear* that a form of *persecution* will occur because of their *real or perceived identity* and that the state is not able to provide sufficient *protection*. This process can often prove to be arduous for asylum seekers. Conflict may arise in trying to prove one's identity.

This is particularly true for LGBTQIA+ asylum seekers. LGBTQIA+ refugees are a group particularly vulnerable to abuses and misprocesses in the asylum procedure. Similarly, women and girls, as discussed before, are often faced with additional, gender-specific, challenges in obtaining protection. For this reason, LGBTQIA+ women may face particularly difficult intersectional challenges in proving their qualification for international protection. In this report we will expose the general issues faced by LGBTQIA+ asylum seekers in qualifying for asylum, keeping in mind that all processes may also include sexist bias on behalf of the adjudicator effectively rendering the procedure even more opaque for women and girls. Indeed, if they have succeeded in reaching their destination, most likely suffering atrocious violations of their rights and bodily integrity along the way, they will still be required to 'prove' that they are 'really' LGBTQIA+ and that there is a real risk for them in returning back to their country of origin for the reason of their real or perceived identity.⁴⁶ While proving membership or perceived membership to a social group based on race, ethnic origin or nationality, it becomes harder when the individual needs to 'prove' their inner beliefs or identity. In this sense, how does one 'prove' that they are LGBTQIA+?

According to the date of Human Dignity Trust,⁴⁷ in 2023, there are still 67 countries around the world that criminalise private, consensual, same-sex activity. Most of those jurisdictions have specifically prohibited acts of 'sodomy', 'buggery' and 'unnatural offences', largely aiming at the prohibition of homosexuality to men. Indeed, of those 67, only 41 have offences criminalising lesbian conduct either

44 Directive 2011/95/DU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons and beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

45 *Ibid.*, Article 2(d).

46 We say 'real or perceived' identity as it may not be a requirement for the person to identify as LGBTQIA+ if they can prove that they are *perceived* as such by the perpetrators and their surrounding therefore creating an effective well-founded fear of being persecuted on such grounds.

47 *Map of Countries that Criminalise LGBT People* | Human Dignity Trust. (n.d.). Human Dignity Trust. <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>

through the strict prohibition of lesbian conduct or through general laws prohibiting all homosexual conduct. 11 countries punish such offences with the death penalty, five of those states actively implement the death penalty for homosexual conduct (Iran, Northern Nigeria, Saudi Arabia, Somalia and Yemen) while it is only a *legal possibility* in the other six (Afghanistan, Brunei, Mauritania, Pakistan, Qatar and UAE). Finally, 14 countries criminalise transgender identities and gender diverse expressions. However, it is fundamental to note that transgender people are targeted by authorities in many other ways, through homosexual conduct prohibitions, public order offences, and more.

Based on such data, it is no surprise that LGBTQIA+ individual may try to flee their country of origin to escape persecution, and sometimes the death penalty, on the basis of their identity. Nevertheless, the existence of active persecution of LGBTQIA+ persons may be questioned by the adjudicators. Relying on the information they have available from the country of origin, it is not unusual for adjudicators to conclude that the individual would not face mistreatment amounting to persecution if they were sent back.

When the existence of a risk for LGBTQIA+ persons to be returned to the country in question has been established, the individual still needs to prove that they are part of this vulnerable group. In official terms, they are asked to establish the credibility of their claim. Proving one's LGBTQIA+ identity is complicated as it depends on one's inner sense of self. Many tests and techniques have been used over the years, largely relying on medical assessment of the individual's response to LGBTQIA+ content or their familiarity with the LGBTQIA+ social scene and culture. There are multiple issues with such tests, generally they are based on what is deemed by adjudicators to be the 'real' behaviour of an LGBTQIA+ persons. We note for instance that, for transgender individuals, there are less obstacles in establishing credibility when they can prove a history of medical treatments, hormone replacement therapy or gender affirming surgeries, compared to when they have not undergone any medical transition. In this sense, there is an underlying ideal that transgender individuals should undergo medical transitions in order to 'look the part' and appear as 'real' transgender persons in the eyes of the adjudicators. This denies the persecution and discrimination faced by transgender persons regardless of their medical status and will likely result in the forced return of transgender persons to places where they will face active persecution and harm.

In addition to having to prove their LGBTQIA+ identity, asylum seekers may have to face other procedural obstacles. Particularly, there are two arguments that have historically been brought up to counter LGBTQIA+ asylum claims that need to be mentioned here.

First, an argument that has long been used in asylum decisions when it came to claims by LGBTQIA+ individuals was that of 'concealment' or 'discretion'. According to this line of thought, if it is proven that an LGBTQIA+ person should avoid the persecution reported by 'hiding' their identity or only disclosing it in the private sphere, the threat of persecution would disappear, then the person could be safely returned to their country of origin.⁴⁸ This logic has been condemned by multiple international bodies including the United Nations High Commissioner for Refugees which highlighted in its Guidance Note n°9 that "a hidden right is not a right".⁴⁹ However, if the opposition to this reasoning has grown in influence in international bodies, as asylum is adjudicated at the national level, it remains

48 Jansen, S., (2014). 'Good Practices Related to LGBTI Asylum Applicants in Europe', ILGA Europe.

49 United Nations High Commissioner for Refugees (UNHCR), *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras 25–26.

very influential in deciding LGBTQIA+ claims. Following the reasoning of the Fundamental Rights Agency, it is clear that such an argument is contrary to the very essence of the Refugee Convention and by extension of the Qualification Directive as “concealing requires coerced, self-enforced suppression of one’s sexual orientation and/or gender identity”⁵⁰ which can amount to persecution in itself and can lead to severe psychological stress, trauma and harm.⁵¹ This is assuming that concealing one’s identity is even possible in the long term.

Then, the other side of this sword is the argument of ‘late disclosure’ to reject claims made by LGBTQIA+ persons. It is made a possibility in the asylum framework to apply for asylum on a ground that arose after the individual initially left their country. In the case of LGBTQIA+ persons this may concern persons who realised their sexual orientation or gender identity differed from the heterosexual cisgender norm during their journey. However, it is very frequently used to deny asylum to individuals who bring up their LGBTQIA+ identity later in the asylum request process because they either did not know that such a ground existed or because they feared further persecution on behalf of the authorities due to their past. In such cases, the adjudicator may decide that the mention of LGBTQIA+ identity came too late to be credible, dismissing the reasons why such a mention may have been hard for the individual to disclose. This is particularly true of women and girls who may have faced strong incentive to hide their identity in the past. For instance, it may be particularly complicated for women to come to terms with assuming their homosexuality when they are claiming asylum with their children. Most adjudicators will question the reality of their claim based on the fact that they were married and have had children in a heterosexual relationship in the past.

Altogether, it is hard for refugees to claim asylum once they have reached their destination and endured the hardship of the refugee journey. Looking specifically at LGBTQIA+ women and girls, it appears that there is a significant additional obstacle in having to ‘prove’ one’s real identity upon arrival in order to obtain protection. This is particularly rendered difficult by the lack of appropriate and sensitive approach to the question by most adjudicators which tend to rely on stereotypes of what LGBTQIA+ should look or behave like.

50 FRA, Being Trans in the EU Comparative analysis of the EU, LGBT survey data Summary, 2012, accessed at <https://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data>

51 Meyer, I.H., (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. (*Psychological Bulletin*, 129, 674 – 697)

CONCLUSION

Through all steps of the asylum process, women and girls face severe forms of gender-based discrimination, violence and harm. The study of the migration of women and girls gives a devastating insight on the situation of equal rights and opportunities for women everywhere at all times. In this sense, one can understand the findings of this report as a magnifying lens over the issues women and girls face at all times through the intensification of their struggles due to the strenuous asylum process. Women and girls face forms of discrimination, violence and harm in their countries of origin that may push them to flee and seek protection abroad. In all spaces they will enter during their journey escaping violence and harm, they are faced with more violence and harm at the hand of authorities and other male migrants. Once they arrive in the country of destination, they will face hardship in obtaining protection, particularly if they are LGBTQIA+. In most situations, women and girls who obtain refugee status in a third country will still face forms of gender-based discrimination, if not violence, in the society they will have to settle in.

Diminishing the gender-based discrimination and violence that women and girls suffer during their migration can be mitigated by policies aiming at bettering access and protection at the borders, in refugee camps and during the asylum request process. This is a step that has been taken by UN bodies and regional systems in various ways.⁵² However, gender-based discrimination and violence against women and girls in asylum settings will not be eradicated in the long term allowing that such forms of discrimination and violence are still prevalent in all societies.

52 Particularly note United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>
www.ghrd.org

RECOMMENDATIONS

Elaborating on the findings of this report, we can put forward some recommendations to states on building a stronger protective legal framework for women and girls asylum seekers and refugees. Recommendations on this matter have been made by diverse international bodies, particularly, we note the General Recommendations n°32 of the UN's CEDAW.⁵³

1. States should thrive towards the full realisation and protection of the human rights and freedoms of women and girls refugees and migrants as established by their international obligations, notably under the 1951 Refugee Convention and the CEDAW.
 - 1.1. Eliminate all forms of discrimination against women and girls in the realisation of their civil, political, economic, social and cultural rights at all levels, regardless of their marital status.⁵⁴ This includes both negative and positive obligations of the state meaning states and state actors must actively refrain from engaging in such acts and the state should prevent and investigate acts perpetrated against women and girls by non-state actors and provide appropriate compensation to victims.
 - 1.2. Thrive towards the elimination of all reservations to the CEDAW and the 1951 Refugee Convention, and full ratification of their attached protocols and other relevant international documents.
2. States must implement all international instruments in a *gender sensitive* manner. In this sense, the specific needs and harms suffered by women and girls must be understood within the context of the 1951 Refugee Convention as forming a particular social group deserving of protection. Women and girls should be able to enjoy the full rights and freedom guaranteed in such documents without discrimination and following principles of substantive equality.⁵⁵
 - 2.1. Organise the effective training of all state officers who may come in contact with women and girl refugees and migrants. This includes but is not limited to border control officers, police and security forces, as well as asylum officers carrying assessment interviews.
 - 2.2. Such training should include gender sensitive answers to asylum. Women may have a harder time producing identification than men due to the gender-based discrimination and violence they may have suffered in their home country. Thus, assessment officers should take into account the gender-specific hardship faced by women in assessing the credibility of their claims.
3. States must recognise the effects of intersectional discrimination and the effect of compounded discrimination.⁵⁶ This applies particularly to the case of LGBTQIA+ women asylum seekers who may face additional hardship in proving the credibility of their claims.

53 *Ibid.*

54 *Ibid.*, para. 4.

55 *Ibid.*, para 36.

56 *Ibid.*, para 6.

4. States should thrive to work closely with civil society organisations working on the rights of women and girls and migrants in order to provide adequate, effective and timely responses.
5. States must provide sex disaggregated data regarding asylum requests in order for international bodies and local organisations to be able to further evaluate the extent of the situation.⁵⁷

⁵⁷ *Ibid.*, para 39.

SOURCES

- Amnesty International. (2021, August 16). *Female refugees face physical assault, exploitation and sexual harassment on their journey through Europe*. <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>
- Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, 2022, accessed at <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>
- Directive 2011/95/DU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons and beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- Donnelly, E. R., & Muthiah, V. (2019). *Protection Women and Girls in Refugee Camps - State Obligations under International Law*. Center for Women, Peace and Security - London School of Economics and Political Science. https://eprints.lse.ac.uk/110299/1/Muthiah_protecting_women_and_girls_published.pdf
- European Women's Lobby (2001). *Migration, trafficking and social development, what is at stake for women*. Brussels, Belgium.
- Farmer, A. (2006). "Refugee responses, state-like behavior, and accountability for human rights violations: a case study of sexual violence in Guinea's refugee camps", 9(1) *Yale Human Rights and Development Law Journal*
- Forced prostitution*. (n.d.). European Institute for Gender Equality. <https://eige.europa.eu/thesaurus/terms/1138>
- Hathaway, J.C., Foster, M. (1991), *the Law of Refugee Status*. Cambridge University Press, https://assets.cambridge.org/97811070/12516/frontmatter/9781107012516_frontmatter.pdf
- Human-Trafficking*. (n.d.). United Nations : Office on Drugs and Crime. <https://www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html>
- International Rescue Committee & Irish Aid. (2019). *Strengthening prevention and response to gender based violence in emergencies and protracted humanitarian crises*. <https://www.irishaid.ie/news-publications/news/newsarchive/2019/may/irish-aid-strategic-partnership-with-the-international-rescue-committee.html>
- Jansen, S., (2014). 'Good Practices Related to LGBTI Asylum Applicants in Europe', ILGA Europe.
- Lindsey, C. (2001, October). *Women facing War*, ICRC, p. 28-30, <https://www.icrc.org/en/doc/assets/www.ghrd.org>

[files/other/icrc_002_0798_women_facing_war.pdf](#)

Map of Countries that Criminalise LGBT People | Human Dignity Trust. (n.d.). Human Dignity Trust. <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>

Meyer, I.H., (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. (*Psychological Bulletin*, 129, 674 – 697)

Murray, A. (2013). Women caught in conflict or refugee situations. In *From Outrage to Courage: The Unjust and Unhealthy Situation of Women in Poorer Countries and What They are Doing About It* (2nd ed., p. Common Courage Press).

Refugee Council (2009). “The Vulnerable Women’s Project, Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence, Literature Review”, Vulnerable Women’s Project, London.

Shearer Demir, J. (2003). *TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION: A GENDER-BASED WELL-FOUNDED FEAR? An examination of refugee status determination for trafficked prostituted women from CEE/CIS countries to Western Europe*. Tufts University. <https://sites.tufts.edu/jha/files/2011/04/a115.pdf>

Spijkerboer, T. (2000). *Gender and Refugee Status*, Ashgate, Aldershot, ISBN 0 7546 2034 4, p. 1-2.

The Shadow Pandemic: Violence against women during COVID-19. (n.d.). UN Women – Headquarters. <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>

United Nations, *Convention and Protocol relating to the Status of Refugees*, 1951. <https://www.unhcr.org/3b66c2aa10>

United Nations High Commissioner for Refugees (UNHCR), *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at: <https://www.refworld.org/docid/48abd5660.html>

United Nations’ High Commissioner for Refugees. (1995). *Sexual Violence Against Refugees - Guidelines on Prevention and Response*. <https://www.refworld.org/pdfid/3ae6b33e0.pdf>

United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration*, 20 November 2020, available at: <https://www.refworld.org/docid/6006fa354.html>

United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>

United Nations, *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* :

summary record of the 29th meeting, held at the Palais des Nations, Geneva, on Thursday 19 July 1951, (A/CONF.2/SR.5), [New York] : UN, 28 Nov. 1951, <https://digitallibrary.un.org/record/696452>

United Nations Committee on Economic, Social and Cultural Rights, “General Comment n°7: the right to adequate housing (art. 11 of the Covenant): forced evictions”, 1997.

United Nations Department of Public Information (1996), Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, para. 135.

United Nations High Commissioner on Refugees (UNHCR)(1991). *Guidelines on the protection of refugee women*, Geneva.; United Nations High Commissioner on Refugees (UNHCR)(1995). “Sexual Violence against refugees: Guidelines on prevention and response”, *International Journal for Refugee Law*, vol. 7, pp. 270-55.

United Nations Human Rights Council, “Guidelines for the Implementation of the Right to Adequate Housing”, 26 December 2019, A/HRC/43/43, para. 34-38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>

United Nations Security Council, Report of the Secretary-General on women, peace and security, 16 October 2002, S/2002/1154, para. 5 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/634/68/PDF/N0263468.pdf?OpenElement>

United Nations Special Rapporteur on adequate housing, “Basic principles and guidelines on development-based evictions and displacement”, 5 February 2007, A/HRC/4/18 Annex 1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>

United Nations, Resolution 1993/77 on forced evictions, 10 March 1993. https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1993-77.doc

Von Hase, I., Stewart-Evans, M., (2021) “Policies and Practice: a Guide to Gender-Responsive Implementation of the Global Compact for Migration”, *UN Women*, accessed at <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-1680a6ef9a>

Women and Girls in Disasters (2022, April 20). Center for Disaster Philanthropy. <https://disasterphilanthropy.org/resources/women-and-girls-in-disasters/>

Women refugees and migrants. (n.d.). UN Women – Europe and Central Asia. <https://eca.unwomen.org/en/news/in-focus/women-refugees-and-migrants-0>

Women Refugees at Risk in Europe. (2016) Nobel Women’s Initiative.

World Health Organization: WHO. (2023, January 31). *Female genital mutilation*. <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>



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