

**Women and the Refugee Experience:  
Towards a Statement of Best  
Practice**

**ICCL Women's Committee**

**In association with the National  
Consultative Committee on Racism and  
Interculturalism  
&  
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## **FOREWORD**

About 90% of refugees in the world are women and children, but frequently a woman refugee is seen only as an appendage to a male refugee. Women can be asylum seekers in their own right too, but for cultural reasons are often less obvious.

This excellent book makes these points and demonstrates how important it is that we facilitate the different needs of women refugees and asylum seekers differently because their problems are not always the same as those of men similar situations.

I commend this book for its content and for its humility.

Senator Mary Henry  
1 June 2000.

## **PREFACE**

This statement was produced by the Women's Committee of the Irish Council for Civil Liberties, in conjunction with several other organisations. The Irish Refugee Council, Access Ireland and the National Consultative Committee on Racism and Interculturalism made an invaluable input.

The views and experiences of refugee and asylum seeking women who are residing in Ireland also formed an integral part of our consultation. We recognise that this document does not encompass the entire range of issues that refugee women experience. However we hope that the information we have collated will assist with the creation of durable solutions to their concerns.

Several individuals and organisations, who have expertise in this area have provided further advice. We would like to thank: Prof Deborah Anker, Harvard Law School; Rosemary Byrne, Faculty of Law, TCD; Dr Liz Cullen, Eastern Regional Health Authority; Ursula Fraser; Dr Colin Harvey, Faculty of Law, Queen's University Belfast; Sr Breege Keenan, Vincentian Refugee Centre; Siobhan Mullally, Faculty of Law, University College Cork; UNHCR, Dublin Office and Rosemary Walsh, Eastern Regional Health Authority.

Financial assistance has been generously provided by 'The Irish Times' and the National Consultative Committee on Racism and Interculturalism.

In these guidelines the term 'refugee women' refers to both asylum seeking and refugee women in the legal sense. We decided to use the term refugee women to encompass the distinction because whether a woman is an asylum seeker or is already a recognized refugee as provided for in the 1951 UN Convention relative to the Status of Refugees, she is a refugee in the literal sense of the word.

## 1. Introduction

### 1.1. Introduction

Ireland's transition towards a multi-cultural society brings with it many opportunities and challenges. As part of that process, our society needs to assess how it accommodates cultural diversity, and accordingly re-evaluate current policies and practices. This statement seeks to address the issues and needs that are particular to the refugee women who live in this State. Women's experiences of 'refugee-hood' differ significantly from those of their male counterparts and refugee women as a group are often rendered invisible. Discussions tend to centre on the 'male' experience of persecution and fail to account for the distinct difficulties women face. It is essential that the government's refugee policy and the wider community take those differences into account.

International human rights organisations and individual states have produced various guidelines to assist with the assessment of asylum claims made by female applicants. We have examined many of these with a view to adopting those practices which were successful in other countries and rejecting those which were not.

The Irish Refugee Act, 1996, reflects the need to distinguish between the claims of male and female refugees. References are made to persecution resulting from a person's gender and/or sexual orientation and there is also recognition of sexual abuse as a form of torture. However, legislation is just one aspect of this issue and developments in other areas are required to fully address the needs of refugee women.

In this statement we explore some of the important distinctions and consider steps which may be taken to assist refugees, relevant organisations and the general public. We hope that a broad range of professionals and agencies will take our points on board.

### 1.2 The Current Status of Women as Refugees

Article 1 (A) of the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol, states that the term "refugee" shall apply to any person who:

"Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside [her] country of origin and is unable or, owing to such fear, is unwilling to avail [herself] of the protection of that country; or who not having a nationality and being outside the country of [her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."<sup>1</sup>

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<sup>1</sup> UNHCR Handbook on Procedures and Criteria for determining Refugee Status, 1979, paragraph 34.

The first section of this paper considers the forms of persecution, which are predominantly experienced by women. It examines ways in the definition of a 'refugee' under the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol (1951 UN Convention) may be interpreted to include persecution suffered specifically by women. The motivations behind persecution are also explored. Whereas the persecution of women is often considered to be a private act which is separate from political and/or state sanctioned oppression, our analysis demonstrates that women are targeted for the same political, religious, national, ethnic and social reasons as men.

### **1.3 Refugee Women and the Asylum Process**

The UNHCR estimates that women and their dependent children constitute between 75-90% of the world's refugee population. However, men constitute the majority of the world's asylum seekers, i.e. those people who seek protection through legal means. In Ireland, women form approximately one third of all refugees who apply for asylum<sup>2</sup>. This is largely due to the fact that it is more difficult for women to flee their countries of origin. Women often cannot afford to travel and may have the additional responsibility and expense of being the primary carer of children. A further barrier to women fleeing their country is lack of education; in most countries the levels of female literacy are lower than that of males.

In addition, many of the women who succeed in fleeing are simply considered dependants of their male relatives and do not seek asylum in their own right. Many women do not realise that the persecution they have experienced is a basis for protection under the 1951 UN Convention. Women from strict patriarchal societies often do not have any input into the filing of claims. Some women are too traumatised and embarrassed to file a claim independently and may prefer a male relative or associate to attend to administrative matters.

The second section of this statement proposes guidelines regarding the legal aspects of refugee women's experiences of the asylum process. The recommendations are applicable to those who work within the respective governmental immigration, refugee and asylum divisions, and the lawyers who represent female asylum applicants. It is critical that women feel confident to present the more private details of their case to the appropriate authorities. Women who do not trust and are intimidated by immigration officials will not express their experience of persecution, effectively. Given the importance of their functions, we believe that State officials should receive ongoing and comprehensive training from groups such as the UNHCR and the Irish Refugee Council.

### **1.4 Refugee and Asylum Seeking Women in the Irish Context**

The experience of forced migration also has implications for the host community. While the refugee may experience feelings of isolation and

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<sup>2</sup> In 1999, there were 2,761 applications for refugee status from women and 4,963 applications from men.

alienation, the community may experience it's own sense of disorientation and disruption due to changes in the ethnic profile in the area in which they live. It is important, during this transitional period, that both groups are provided with information relating to the other's cultures.

An increased awareness of the dynamics of displacement, and the difficulties faced by refugee women can be achieved through public awareness and education. Such programmes should promote respect, inclusion and an understanding of the inherent difficulties of being forced to flee one's country under the extreme circumstance of persecution. Sensitive discussions should be promoted in Irish educational institutions, the Irish media, and amongst policy makers in the appropriate governmental departments and divisions.

The final section of this statement examines some of the social issues that refugee women in Ireland face. These issues encompass the health care, social welfare and educational sectors, and are often equally as important as the legal aspects of a refugee woman's experience.

Concerns may be expressed that our guidelines distance refugee women from what are perceived to be the larger issues. However, our contribution is intended for the development of overall social and political practice and much of it is also applicable to refugee men and children. The guidelines are proposed to help build trust between female refugees and their host community. We hope that our suggestions will assist immigration officials, education and health care workers and others, in their work with refugee women and finally, we hope that they serve to promote an atmosphere of respect and understanding between refugee women and the wider Irish society.



## Section 2

## 2. Substantive Issues

### 2.1 Convention Status

Art. 1 A (2) UN Convention on the Status of Refugees  
(...) the term refugee shall apply to any person who... owing to a 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 her or his nationality and is unable, or owing to such fear is unwilling to avail herself of the protection of that country;...

Gender is not enumerated as a ground for establishing refugee status under the 1951 UN Convention and historically, persecution has been interpreted in light of men's experiences. Persecution suffered by women is often ignored or misunderstood due to the common preconception that their applications and status are dependent on those of their male counterparts. In addition there is no definition in the Convention of the degree of torture or serious harm that is required to establish persecution. One suggested framework, which clarifies many aspects of the 1951 UN Convention definition, is as follows<sup>3</sup>:

**Serious harm + Failure of State Protection = Persecution**

This equation provides a framework within which women's experience of persecution can be interpreted in the context of the 1951 UN Convention. The Convention envisages the protection of women who fear serious harm in their country of origin, where the state is unable or unwilling protect them. Whether an instance of harm, including gender-specific harm, amounts to persecution should be assessed on the basis of internationally recognised human rights standards, as set out in the international instruments detailed in a schedule hereto.

### 2.2 'Serious harm'

An expert in the area of refugee law has stated that: "...persecution is most appropriately defined as the sustained or systemic failure of state protection in relation to one of the core entitlements, which has been recognised by the international community."<sup>4</sup>

When considering a gender-based application for refugee status additional considerations must be taken into account.

#### 2.2.1

Gender-specific violence should be evaluated similarly to other forms of violence, which are held to amount to persecution<sup>5</sup>. The appearance of

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<sup>3</sup> Hathaway, James C., *The Law of Refugee Status*, (1991), p. 112.

<sup>4</sup> Hathaway, James, *ibid*, p.112.

<sup>5</sup> The Statute of the International Criminal Court, includes, *inter alia*, rape, sexual slavery, prostitution, forced pregnancy, enforced sterilisation, or any other form of

sexual violence in a claim should never lead to a conclusion that the alleged harm is an instance of purely personal harm. 'Serious harm' may include sexual violence and abuse, female genital mutilation, marriage related harm, violence within the family or community and domestic slavery. The fact that violence against women is universal and widespread is irrelevant when determining whether gender-specific forms of serious harm constitute persecution.

### 2.2.2

Sexual violence may take many forms including: *"enforced nakedness; sexually abusive taunts and threats; rape; mechanical stimulation of the erogenous zones; the insertion of objects into the body openings; the forced witnessing of sexual acts; forced masturbation by others; fellatio and oral sex; a general atmosphere of sexual aggression and threats of the loss of the ability to reproduce and/or enjoyment of sexual relations in the future."*<sup>6</sup>

### 2.2.3

Persecution may also take the form of severe restrictions on women's social behaviour for example, dress code and restrictions of movement, employment or education. Draconian penalties may be imposed on women who disobey these social mores. In certain societies 'honour killings' and the severe consequences of divorce, separation or widowhood may constitute persecution.

### 2.2.4

In many societies female genital mutilations<sup>7</sup> is an accepted and often compulsory practice. It is estimated that FGM is practised in approximately 20 African countries. This practice raises many human rights issues, including reproductive and sexual rights, women's right to protection from violence, the right to health, the right to freedom from cruel, inhuman and degrading treatment and children's rights. The fact that the mutilation has already happened should not prohibit the finding of a 'well-founded fear of persecution' should the applicant be returned to her country of origin. The possible social and medical consequences of return should be noted by decision-makers. For example, an infibulated woman must be cut open to allow for intercourse on her wedding night and is often closed again to ensure fidelity to her husband. In addition to the initial pain, many women forced to undergo FGM face long-term physiological, sexual and psychological health risks. Furthermore, women who refuse to undergo FGM are often considered to

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sexual violence of comparable gravity, as crimes against humanity, when committed as part of a widest systematic attack directed against any civilian population. The Statute, furthermore defines, *inter alia*, the following as 'war crimes': rape, sexual slavery, enforced prostitution, forced pregnancy or other forms of sexual violence.

<sup>6</sup> Refugee Women's Legal Group (1998). Gender Guidelines for the Adjudication of Female Asylum Claimants in the UK.

<sup>7</sup> Female Genital Mutilation (FGM) generally takes three forms. It includes clitoridectomy (partial or total removal of the clitoris), excision (the removal of the clitoris and the labia minora), and infibulation (commonly referred to as Sunna). This requires the complete removal of the clitoris and labia minora; as well as the inner surface of the labia majora; the vulva is then stitched together so that a tiny opening is maintained in the vagina to provide for the passing of urine and menstrual blood.

have transgressed social mores and depending on the particular circumstances, the resulting mistreatment may amount to persecution.

#### **2.2.5**

Social and cultural norms in relation to prescribed gender roles and behaviour mean that many lesbian women face violations of their human rights. They may experience different forms of 'serious harm' than those characteristically targeted at gay men. For example, many lesbian women have effectively been denied the right to express their sexual orientation because they have been forced into marriage.

#### **2.2.6**

Forced sterilisation and forced abortion are persecutory in their application even though they may be deemed to have legitimate goals. They constitute infringements of the basic right to privacy and family life, including the right to marry and have a family.

### **2.3 The Failure of State Protection**

Refugee law substitutes the protection afforded by one's nationality with that of the international community. Therefore an integral part of the Convention definition, is that a woman must prove that the authorities in her country of origin are either unwilling or unable to protect her from persecution.

This may arise:

#### **2.3.1**

Where the government or local authorities actually inflict the harm;

#### **2.3.2**

When the serious harm is committed by others but the authorities are unwilling, or unable, to protect the woman;

#### **2.3.3**

Where the laws and customs are harmful, or inherently discriminatory against women, but are nevertheless supported or acquiesced to by the authorities;

#### **2.3.4**

Where a law or policy may have a legitimate goal but, may be administered through persecutory means or the penalty for non-compliance with the law or policy may be disproportionately severe.

### **2.4 The State's Inability to Protect a Woman**

In some countries the government is powerless to protect women, especially women who live in rural communities. The 1998 Human Rights Country Report, published by the United States Department of State, records that in the Democratic Republic of Congo: *The significant risk of rape, sometimes perpetuated by uniformed persons, restricts freedom of movement at night for women in many neighbourhoods. Groups of citizens implemented neighbourhood watch programs, but women in many*

*parts of Kinshasa and Lubumbashi do not leave their homes at night for fear of attack.*

In this situation the establishment of community groups is clearly not sufficient to ensure the female population's safety.

Furthermore the Canadian *Guidelines for Women Refugee Claimants* state that if a woman can reasonably prove that she felt it was unsafe to contact her local and national authorities, then *"her failure to approach the state for protection will not defeat her claim"*<sup>8</sup>. Often it is ineffectual to seek protection from the government, and indeed it may further weaken her position.

## **2.5 A Woman's Internal Flight Alternative**

Due to the surrogate nature of international protection, it must be demonstrated that an applicant did not have what is called an 'internal flight alternative'. The Australian Department of Immigration and Multicultural Affairs (ADIMA) explains:

*In considering the issue of relocation, the relevant issue is whether the applicant could safely live in another part of the country. Officers must carefully consider gender-related issues when applying this test. Financial, logistical, social, cultural and other barriers to reaching internal safety may significantly affect persons of one gender over another. In addition, gender-based persecution may be systemic and no protection may be available from the authorities in any part of the country*<sup>9</sup>.

Internal flight may not represent a realistic alternative for many women. In societies, which are based on kinship, it is not feasible for a single woman to be received into a new community. A Turkish widow who sought asylum in Canada because she had no close family in Turkey, and had experienced daily harassment, sexual assault and an attempted abduction was granted refugee status.

*The Immigration Appeal Board found that the government was unwilling to protect the claimant because, in the authorities' view, it was inappropriate for her to be living without the protection of a male relative. Accordingly, the Board determined Mrs. Incirciyan to be a refugee by reason of her membership of a particular social group composed of "single women living in a Moslem country without the protection of a male relative."*<sup>10</sup>

Suspensions, on the part of community members, surrounding the history of such a single woman may reveal the reasons that she left her original community and it is possible that she will be faced with the same

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<sup>8</sup> Canadian Immigration and Refugee Board (CIRB), (1996). *Guidelines on Women Refugee Claimants Fearing Gender Related Persecution*: UPDATE, C.2.

<sup>9</sup> ADIMA (July 1996). *Guidelines for Gender Issues for Decision Makers*, par. 4.21 (annex 6).

<sup>10</sup> Hathaway, James C. *The Law of Refugee Status*. Toronto, Butterworths. (1991) 162.

persecution again. The requirement of internal protection should be "...restricted to persons who can genuinely access domestic protection, and for whom the reality of protection is meaningful"<sup>11</sup>.

## **2.6 Return to Country of Origin**

It may not be possible for a woman to return to her country of origin because of her experiences. Numerous social, religious, ethnic and political elements which may not be relevant to a male applicant, may play a vital role in her acceptance back into her community. For instance, the reception of a woman who has been raped during war, may be hostile and life threatening, if society deems her shame to be so great that she does not deserve to live. Thus dangers may remain for women based on their experiences during the war, even though the war itself has ended.

It is important that the role of the state and the extent of protection it is willing or able to extend to women, be understood in the context of the dangers which women may face. For example, an Afghan woman who fled to England to escape physical and sexual abuse by her husband feared returning home because

*She is already marked as having been politically active in defiance of her husband and this will further mark her out as having transgressed the boundaries women are supposed to operate within. She fears that her husband may arrange to have her killed and will be able to escape criminal prosecution through his considerable wealth, influence and political connections.*<sup>12</sup>

## **2.7 Convention Status**

### **2.7.1 General Proposition**

Under the 1951 Convention the claimant must demonstrate a well- founded fear of serious harm, based on one of the following grounds:

- "Race"
- Religion
- Nationality
- Political Opinion
- Membership of a particular Social Group

Female asylum seekers often experience difficulties when having to categorise the grounds of their persecution. Many claims with a gender dimension are not perceived to fall within one of the Convention grounds. Survivors of sexual violence for example, often find it difficult to establish that their victimisation was linked to their "race", religion, nationality, political opinion or membership of a

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<sup>11</sup> Hathaway, James C., *ibid*, p.134.

<sup>12</sup> Crawley, Heaven, *Women as Asylum Seekers: A Legal Handbook*, RWLG, London (1998) p.133.

particular social group. Political opinion and social group in particular, require appropriate interpretation to encompass gender-related persecution claims.

The *Irish Refugee Act 1996* offers additional protection in that it specifically enumerates gender and sexual orientation as grounds within the category of "social group". Section 2 provides that:

*Membership of a particular social group includes membership of a trade union and also includes membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation.*

### **2.7.2 "Race"**

"Race" has to be understood in its widest sense to include ethnic groups, which may be referred to as "races" in common usage<sup>13</sup>. Although persecution on the basis of "race" is clearly not specific to women, the forms of persecution inflicted on women for reasons of "race" are often gender-specific. Frequently there are cases where a woman claims to fear persecution because of her "race" and gender.

In Somalia for example, women from minority tribes are particularly vulnerable to sexual abuse because their communities fall outside the Somali clan structure, fail to field their own militias, and are accorded low social status by ethnic Somalis. The repeated violations of minority women by occupying militias were interpreted by members of minority clans as being intended to create such intolerable conditions that family heads would abandon the town and leave it to the new occupiers<sup>14</sup>.

The persecutor may decide to destroy the ethnic identity and prosperity of a group by killing, maiming or incarcerating the men whilst the women may be viewed as propagating the ethnic identity through her reproductive role, and may be persecuted through, for example, sexual violence or control of reproduction.<sup>15</sup>

The UK judiciary has acknowledged the association of sexual violence with persecution for reasons of "race":

*"(She) has suffered discrimination and harassment by reason of her Kurdish ethnic origin since her childhood... The rape of the appellant is linked inextricably to her political activities ... and also therefore inextricably linked to her Kurdish ethnic origin ... (She) had and has a genuine fear of persecution for a Convention reason at the hands of the*

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<sup>13</sup> Paragraph 68, UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

<sup>14</sup> Victims and Vulnerable Groups in Southern Somalia, Research Directorate, Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada, May 1995.

<sup>15</sup> Paragraph 4.6, RWLG, Gender Guidelines for the Determination of Asylum Claims in the UK, 1998.

*Turkish authorities ... the maltreatment and sexual abuse were acts of persecution by the State*<sup>16</sup>.

### **2.7.3 Religion**

Often there is a degree of overlap between religion and political opinion especially where both encompass social mores. Women in an Islamic society for example, who choose not to follow the rules of State religion or to fulfil their assigned social role may be able to establish a well-founded fear of persecution on religious grounds. This was recognised by the New Zealand Appeals Authority who found that:

*"Given the theocratic nature and current regime in Iran, the appellant's opposition, both to the patriarchal society comprising her extended Arab family and to the male domination of women in the Iranian society at large, is conveniently addressed under both the religion and political opinion grounds ... We are satisfied on the evidence that a very substantial element of the appellant's case, falls within the religion and political opinion categories of the Convention."*<sup>17</sup>

Furthermore a woman's religious identity may be aligned with that of male members of her family or community. Imputed or attributed religious identity may therefore be significant.<sup>18</sup>

### **2.7.4 Nationality**

The term 'nationality' is not restricted to citizenship. It includes membership of an ethnic or linguistic group and may overlap with the concepts of "race", religion and political opinion. According to Paragraph 74 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status:

*"Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic or linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution."*

Whilst actual or attributed national identity is not specific to women, it may operate in tandem with gender to establish a fear of persecution. Persecution for reasons of nationality may result from legal and social practices, which deprive a woman of her nationality or citizenship in certain situations, for example, through marriage to a "foreign" national<sup>19</sup>, such practices potentially leaving women vulnerable to abuse.

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<sup>16</sup> Appeal No. HX/73695195, as quoted in Heaven Crawley, *Women as Asylum Seekers: A Legal Handbook*, 1997, p.119.

<sup>17</sup> Appeal No. 2093/93, as quoted in Heaven Crawley, *Women as Asylum Seekers: A Legal Handbook*, 1997, p.124.

<sup>18</sup> Paragraph 4.11, *Gender Guidelines for the Determination of Asylum Claims in the UK*, 1998.

<sup>19</sup> Paragraph 4.8, *Gender Guidelines for the Determination of Asylum Claims in the UK*, 1998.

### 2.7.5 Political Opinion

The International Covenant on Civil and Political Rights (ICCPR) recognises that there is a fundamental right for an individual to freely hold an opinion, to freely express opinions and to enjoy freedom of conscience.

The predominant interpretation of political opinion reflects the male experience, to date. The archetypal image of a political refugee, fleeing persecution due to direct involvement in conventional political activity often fails to correspond with the reality of many women's experiences. Many women are visibly active in conventional political activities. Many more are directly involved in non-conventional forms of political activity. An activity is rendered political by its context. For example, women may hide people, courier messages or provide community services, food, clothing or medical care to male activists. These political activities, although apparently minor, may put women at risk of serious harm on the basis of an actual or imputed political opinion. Significantly, the Convention refers to political "opinion" rather than the more limited concept of political "activities."

It is important not to underestimate or overlook the political dimensions of a woman's experience of persecution. A woman's claim for refugee status should not be considered as a mere appendix to her male partner's. Whilst a woman may not base her application directly on political grounds and indeed may experience difficulty in characterising the grounds underlying her persecution, the possibility of persecution due to attributed or actual political grounds should be thoroughly explored.

In many societies there is a presumption that women's political views are aligned with those of the dominant members of the family. Thus they may experience persecution because of an imputed political opinion<sup>20</sup>.

In addition to having the political opinions of the male members of her family imputed to her, society may also impute opinions in line with current social mores. This can be seen, for example, in the characterisation of a raped woman as adulterous, in the social ostracism of an unmarried, separated, divorced, widowed or lesbian woman, and in the politicisation of intentional or unintentional violations of dress codes.<sup>21</sup>

### 2.7.6 Membership of a Particular Social Group

Social Groups were defined in *Attorney General of Canada v. Ward*<sup>22</sup> as

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<sup>20</sup> Paragraph 4.26, Australian Department of Immigration and Multi-Cultural Affairs: *Guidelines on Gender Issues for Decision Makers*, 1996.

<sup>21</sup> Paragraph 4.18, *Gender Guidelines for Determination of Asylum Claims in the UK*, 1998.

<sup>22</sup> *Attorney General of Canada v. Ward* (1993) 103 D.L.R. (4th) 1, 33-34.



- groups defined by an innate or unchangeable characteristic
- groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association, and
- groups associated by a former voluntary status which is unalterable due to its historical permanence.

The Refugee Act, 1996 recognises gender and sexual orientation as innate and immutable characteristics and enumerates them as further categories which may constitute social groups. The circumstances giving rise to a woman's fear of persecution are often unique to women. Infanticide, female genital mutilation, bride burning, forced marriage, domestic violence, strict dress codes, forced abortion or compulsory sterilisation are only some examples of persecutory experiences of female claimants.

Many women face persecution because of their sexual orientation. Telling a homosexual asylum-seeker that she can avoid persecution by being careful to live a hidden inconspicuous life is as unacceptable as suggesting that someone deny her religious beliefs, or try to change her skin-colour<sup>23</sup>.

Asylum claims are often based on family relationships. There can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than the nuclear family<sup>24</sup>, and such claims are frequently asserted by female applicants particularly from countries where men tend to be more politically active than women. A woman may, for example, be persecuted as a means of punishing or demoralising members of her family or in order to force her to reveal information about members of her family.<sup>25</sup>

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<sup>23</sup> German Administrative Court/Wiesbaden Judgment as quoted in: UNHCR Division of International Protection, *Gender Related Persecution: An Analysis of Recent Trends*, 1996, p.96

<sup>24</sup> *Gebremichael v INS*, 10F 3.d 28, 36 (1st Cir. 1993)

<sup>25</sup> Hathaway, James C., *ibid*, p.164-5.

### 3. Asylum Procedures

#### 3.1 Introduction

Many female applicants for refugee status encounter additional problems when attempting to establish credibility. Many women may not be full members of a political party or trade union and therefore may not, for example, have membership cards. The UNHCR Handbook states that<sup>26</sup>:

*"After the applicant has made a genuine effort to substantiate (her) story there may still be a lack of evidence for some of (her) statements...It is hardly possible for a refugee to "prove" every part of (her) case and indeed if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt."*

Women who are persecuted because of imputed political opinion may find it impossible to produce any evidence to support their claim. Country of origin reports, newspaper articles and other sources frequently do not refer to the status of women. It is often difficult for female asylum seekers and their legal representatives to obtain comprehensive reports on the treatment of women in the country of origin. Human rights violations against women are rampant partly because they largely remain hidden and unreported. The absence of human rights documentation relating to the status of women should not lead to the conclusion that abuses do not occur.

There is very often no physical evidence in the case of sexual and physical abuse and where there was, it may no longer be visible due to the passage of time. Women fleeing from cultures where preserving their virginity or marital dignity are essential may find it particularly difficult to discuss sexual abuse as they may already feel that they have dishonoured their family. They may face ostracism if the details of the abuse become known.

In some societies, men do not discuss their political or even their day-to-day activities with female members of their family. Consequently women may find themselves in the difficult situation of being unable to corroborate their husband's story. An entire testimony may be discarded if she is genuinely unaware of her husband's activities.

In some societies, women spend their time in the home and are not accustomed to dealing with people in authority. This may add to the trauma of having to articulate their experience and can sometimes be as traumatic as the experience itself. Furthermore the dilemma surrounding credibility may be exacerbated, where, for example the culture of origin demands that women avert their eyes when speaking to a figure of

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<sup>26</sup> UNHCR Handbook on Procedures and Criteria for determining Refugee Status, 1979; paragraph 203.

authority as a mark of respect. In contrast there is a perception in Western society that people who avert their gaze when replying to questions, or appear nervous, are being untruthful. Thus, it is imperative that a female asylum seeker's demeanour be assessed with cultural sensitivity.

The standard of proof, which a female asylum seeker must establish is "reasonable degree of likelihood" that she will be persecuted if returned to her country of origin. This standard recognises the difficulty of establishing a claim and also the grave consequences of an incorrect decision by the relevant authorities.

### **3.2 Immigration Procedure at Point of Entry**

#### **3.2.1**

At the outset of the asylum procedure, it is important that a woman's application is approached as being independent of her male associates. Women should be advised in private of the possibility of seeking asylum in her own right.

#### **3.2.2**

Immigration officials should be trained in cultural sensitivity and gender issues and in international human rights law. The availability of female immigration officials and interpreters is crucial at all points of entry to guarantee open discussion. All female asylum seekers should have access to legal advice at point of entry.

#### **3.2.3**

Immigration officers should not ask questions about the substantive asylum case. It should be sufficient to establish that a woman wishes to apply for refugee status.

### **3.3 Interviews**

#### **3.3.1**

Substantive interviews should not be held immediately on arrival. A female refugee, particularly if traumatised, is ill prepared to give a coherent account of her claim. Adequate time must also be provided for the applicant to access documentary evidence in support of her claim, and to seek legal advice.

#### **3.3.2**

Interviews should not be conducted in the presence of members of the woman's family, unless the applicant specifically requests this. Some women would prefer to keep their experiences of sexual violence from their partner. Most women would not be prepared to discuss details of their imprisonment, torture and other distressing experiences in the presence of their children.

#### **3.3.3**

Women who have been abused by men are unlikely to divulge sensitive information to either a male interviewer or interpreter. Therefore, female interviewers and interpreters should be provided. However merely

being female does not ensure an awareness of gender issues and appropriate training is essential.

#### **3.3.4**

Absolute confidentiality must be maintained by immigration officials and translators at all times. Some women may be anxious that their political opinion or activities could become known to the authorities in their countries or the refugee community in Ireland. Many women experience concern that their family or community would become aware of sexual abuse or their sexual orientation.

#### **3.3.5**

Interviews should be conducted in a non-confrontational, sensitive manner. The interview should never be adversarial. The interviewer must facilitate female applicants in telling their stories, by allocating sufficient time for interviews to take place, not making judgmental comments or talking at the same time as the woman.

#### **3.3.6**

It is important that interviewers do not make gestures, which asylum seekers may find threatening or intimidating. Their body language should be open and unthreatening. They should never raise their voice or argue with interviewees.

#### **3.3.7**

Questions should be short and simple. If the applicant does not appear to understand the question, it should be re-phrased. Both specific and 'open ended' questions should be used. Interviewers should encourage women to relate comprehensive details of their experience by asking follow up questions. Interviewers should also take linguistic differences into consideration when communicating.

#### **3.3.8**

Many women are so traumatised by their experiences in their country of origin and their flight to Ireland that they cannot remember specific incidents, dates or details.

#### **3.3.9**

Women may be unable to describe their experiences due to post-traumatic stress disorder, depression or shame. Lack of emotion when describing a distressing incident should not be taken to mean that a woman's account lacks credibility.

#### **3.3.10**

Women should not be required to give details of rape, torture or other degrading treatment they have experienced. To establish that it occurred should be sufficient.

#### **3.3.11**

It is essential that interviewers and decision-makers are familiar with women's role, status and position in their countries of origin.

#### **3.3.12**

All asylum interviews should be taped with the consent of the applicants. This would ensure the clarification of misunderstandings and it encourages a professional standard of interviewing.

### **3.4 Legal Representation**

#### **3.4.1**

Each applicant should be informed of her right to have access to legal advice and representation at all stages of the asylum procedure.

#### **3.4.2**

Ongoing training in legal, cultural and gender issues should be provided for legal representatives. An extensive pool of country of origin information must be readily available to legal representatives and researchers.

#### **3.4.3**

Translation services should be freely available for all consultations between asylum seekers and their legal representatives at all stages of the asylum procedure.

#### **3.4.4**

The relevant medical and psychiatric reports and other expert opinions should be freely available to legal representatives on behalf of their clients.

### **3.5 Appeal Hearings**

#### **3.5.1**

As with the initial application a woman's appeal should not be presumed to be dependent on her male counterparts and provisions must be made for a separate hearing. She and her legal representative should be made aware of this option by letter.

#### **3.5.2**

Members of the Appeals Tribunal<sup>27</sup> must be fully trained in refugee and international human rights law, cultural and gender issues. It is essential that they familiarise themselves with the role and status of women in countries of origin.

#### **3.5.3**

Female applicants should be fully informed of the purpose of the appeal hearing, the role and independence of the Appeals Tribunal, the role of the presenting officer for the Department of Justice, Equality and Law Reform and the role of any other persons attending the hearing.

#### **3.5.4**

Appeal hearings can be particularly traumatic for some female applicants, who have already detailed their experiences.

#### **3.5.5**

Female asylum seekers should be offered an all-female appeal hearing. Confidentiality must be assured.

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<sup>27</sup> On full implementation of the 1996 Refugee Act, the Refugee Appeals Tribunal will replace the Appeals Authorities.

### **3.6 Detention**

#### **3.6.1**

Detention of asylum seekers should be generally avoided.

#### **3.6.2**

Where detention is deemed absolutely essential, female asylum seekers should be fully informed of the reason for their detention and its duration.

Legal assistance and access to effective remedy in the Courts should be available at all times during the detention of asylum seekers.

#### **3.6.3**

Prisons should not be used as detention centres, as many women will have experienced trauma in custody in their countries of origin.

#### **3.6.4**

Women asylum seekers should not be detained with convicted or remand prisoners.

#### **3.6.5**

If asylum seekers are to be detained in special detention centres, overcrowding should be avoided. Secure facilities should be segregated for women and provision made for families to remain together.

#### **3.6.6**

Access to adequate medical assistance and advice including counselling is crucial. Female medical personnel should be provided.

#### **3.6.7**

Female detainees should be permitted to contact, and receive visits from, representatives of UNHCR, lawyers, refugee community groups and relevant NGOs.

#### **3.6.8**

A lack of meaningful activity and inability to communicate can exacerbate feelings of isolation and powerlessness. The provision of tuition, in particular English language classes, may counter this.

#### **3.6.9**

If the detainee wishes, her family members should be informed of her detention and should be permitted to visit as soon as possible.

### **3.7 Dublin Convention Cases<sup>28</sup>**

#### **3.7.1**

Applications from family members and partners should be examined in the same EU Member State to facilitate family reunification.

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<sup>28</sup> The Convention determining the State responsible for examining Applications for Asylum lodged in one of the Member States of the European Communities, commonly known as the Dublin Convention.

### 3.7.2

Asylum seekers whose claims are being dealt with under the Dublin Convention must be given sufficient opportunity to consult their legal representatives and accordingly make any necessary representations. It is vital that female asylum seekers understand the implications of having their claim transferred to another Member State.

### 3.7.3

Female asylum seekers should not be removed to a third country, under Article 3(5) of the Dublin Convention, if any risk (including gender-related risk) of persecution exists in that country.

### 3.7.4

Female asylum seekers should not be transferred to countries where persecution by 'non-state agents' is not recognised, to avoid the risk of refoulement in accordance with Article 33 of the 1951 Convention and Section 5 of the Refugee Act 1996.

## 3.8 Manifestly Unfounded Claims<sup>29</sup>

Accelerated procedures such as 'manifestly unfounded', often affect female asylum seekers in a more serious way than they affect males. Women may not be able to present traumatic experiences such as rape or other forms of sexual violence either in their questionnaire or at interview. The history of sexual trauma often surfaces much later, within the context of therapy or medical treatment.

### 3.8.1

Applications for asylum should only be considered as 'manifestly unfounded' if they are "...clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees...."<sup>30</sup>

### 3.8.2

To establish the above a full interview with the claimant is required. A female interviewer and interpreter should be made available. Legal advice should also be made available before interview.

### 3.8.3

Reluctance or inability to provide full details to substantiate a woman's claim can often be due to shame and trauma rather than an attempt to mislead officials.

### 3.8.4

Claims should not be determined as 'manifestly unfounded' because an applicant left the State after making an application for asylum, without reasonable cause. Some female asylum seekers may, for example have to

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<sup>29</sup> This is an accelerated procedure under which applications for refugee status may be considered to be manifestly unfounded and not worthy of further investigation. See paragraphs 12-14 of the Procedures for Processing Asylum Claims in Ireland and Section 12 of the Refugee Act, 1996.

<sup>30</sup> Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR. Conclusion 30, The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum.

leave the State to access medical services not available here and may be reluctant to inform the authorities.

#### **3.8.5**

Applicants whose claims are deemed to be 'manifestly unfounded' should be entitled to an oral appeal and free legal representation.

### **3.9 Voluntary return**

#### **3.9.1**

It is essential to ensure that a woman's consent to return is truly voluntary and not vitiated by duress from other family members or the authorities.

#### **3.9.2**

Access to information relating to the treatment of women in the country of origin should be provided to a woman and her legal representative prior to her return.

#### **3.9.3**

Visits by refugee community group representatives to the country of origin to assess the safety of return should be facilitated and these should include female representatives.

### **3.10 Deportation**

#### **3.10.1**

Voluntary return should be encouraged where possible as an alternative to deportation.

#### **3.10.2**

Deportation orders should not be made where a doctor has certified that a woman or her children are mentally or physically unfit to travel.

#### **3.10.3**

Particularly vulnerable groups such as elderly women or women with disabilities should not be deported, unless it is established that there are adequate services in their country of origin to meet their needs.

#### **3.10.4**

Police and immigration officials should be adequately trained to ensure that deportations are carried out as humanely as possible. Physical force should not be used.

#### **3.10.5**

Where a woman has been informed that the Minister of Justice, Equality and Law Reform intends to make a deportation order and agrees to leave the State, she should be given adequate opportunity to make arrangements, particularly if she has dependent children.

### **3.11 Family Reunification**

#### **3.11.1**



Family reunification should be available to recognised refugees and to asylum seekers, where vulnerable family members, such as young children, disabled and elderly relatives have been left behind without adequate care.

### **3.11.2**

Family reunification should take place as soon as possible to facilitate integration.

### **3.11.3**

Family reunification should not be limited to the family based on marriage but should also include cohabiting couples, whether heterosexual or homosexual, and their children and dependants.

## **4. Reception and integration**

### **4.1 Introduction**

Despite the fact that refugee women belong to different ethnic, national, religious, linguistic, economic and cultural groups, they face many similar difficulties on arrival in Ireland. We outline some of these in this section and suggest guidelines for good practice in relation to the provision of services to alleviate these difficulties. Many refugee women have had little or no access to health or welfare services for some time prior to their arrival in Ireland, if ever, and it is essential that services are established, which are culturally and gender sensitive.

Our recommendations refer to the broad needs of women as a social category rather than to the specific needs of individual women and may also pertain to the needs of men and children.

### **4.2 Accommodation**

#### **4.2.1**

Housing, appropriate to the specific needs of asylum seekers, should be available on arrival. Relevant staff should undergo regular training with regards to cultural sensitivity.

#### **4.2.2**

Refugee women should never be forced to leave emergency or temporary accommodation before an alternative has been found.

#### **4.2.3**

While the need for refugees to form communities must be acknowledged, the ghettoisation of asylum seekers and refugees, as occurs in other countries, should be avoided in all circumstances, as this may further isolate persons in need of protection.

#### **4.2.4**

The authority of immigration officers to enter reception centres should be limited to that applicable to independent or private housing.

### **4.3. Regional Relocation**

#### **4.3.1**

Regional relocation should only be implemented on a voluntary basis. Full information must be made available to asylum seekers in their own language on the selected location, services etc. The prospective loss of the support of their communities, being uprooted and moving to areas, which may be isolated and unfamiliar with ethnic minorities, is particularly unhelpful to women.

#### **4.3.2**

Legal, medical, social and other services for asylum seeking communities moving to new destinations should be properly resourced and in place prior to their arrival.

#### **4.3.3**

Asylum seekers should not be accommodated in former operative services. Some individuals may be coming from a militarised environment and accommodation of this nature would be inappropriate, as it could prevent individual asylum seekers from overcoming the effects of persecution and flight.

#### **4.3.4**

Collective accommodation or reception centres should not be built in remote locations. This will only serve to further asylum seeker's feelings of isolation. It could also affect the State's ability to provide adequate services, in particular effective legal representation.

### **4.4 Health**

#### **4.4.1**

A woman's ability to engage confidently with doctors, nurses and health workers may be further inhibited by the trauma of abuse, dislocation and adjusting to a new environment<sup>31</sup>. It is essential, therefore, that culturally sensitive interpretation and translation facilities are in place.

#### **4.4.2**

Refugee women, including those who speak English, may have difficulties in understanding the way that services are structured and accessed in Ireland. Health education is required to combat this, with particular emphasis on the use of health practices, which are unfamiliar in this country<sup>32</sup>.

#### **4.4.3**

As refugee women are often the primary providers of health care to family members, it is essential that they have access to health care information. An effective translation service may also act as a culturally sensitive mediation service.

#### **4.4.4**

Refugee women and others in the refugee community should be consulted at all stages of the planning design and delivery of health services. Where possible, refugee (and migrant) women with relevant qualifications and experience should be recruited as primary health care providers<sup>33</sup>. Irish

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<sup>31</sup> The majority of refugee women who contributed to these guidelines identified the lack of culturally sensitive translation facilities as the paramount health issue.

<sup>32</sup> An example of the latter is the use of traditional medicines and remedies which may be taken in conjunction with prescribed medication. Most Irish practitioners are unfamiliar with traditional medicines and this may have a negative effect on the patient's health and well-being.

<sup>33</sup> Al-Hasaniya (Moroccan Women's Centre) could be a useful model for this. It is a community based service for Arabic speaking refugee and migrant women in North

care providers should engage actively in an ongoing consultation process with women from refugee communities to ensure that the design and delivery of services responds adequately to the evolving needs of refugee women and their families.

#### **4.4.5**

Refugee women and their families should not be subjected to screening for illnesses and diseases where it is not standard practice to screen Irish patients for same, unless a woman specifically requests such screening.

#### **4.4.6**

Refugee women should always have the option of a female doctor and medical worker.

#### **4.4.7**

Refugee women need access to culturally sensitive counselling and support services. Depression and other post-traumatic stress disorders are relatively common among female refugees. Many face psychological difficulties resulting from physical abuse, loss of family and community support. Funding and support should be made available to appropriate organisations to develop psychological and social services.

#### **4.4.8**

Forced dispersal may have serious implications for the health care of refugee women and their families. For example, women who have undergone female genital mutilation in their country of origin or women presenting with tropical diseases, require access to medical professionals with appropriate experience. In addition, access to community support and community participation (healers) in the healing process is considered essential for recovery from illness in many cultures.

### **4.5 Social Welfare and Education**

#### **4.5.1**

Asylum seeking and refugee women who are single parents are doubly disadvantaged when trying to find suitable accommodation. Assistance should reflect the additional disadvantages that women may experience.

#### **4.5.2**

Direct support should not be used as a means of supporting refugee women. It creates an institutionalised underclass within the host society and increases women's dependence and vulnerability to exploitation. Ultimately, it may affect their long-term ability to participate in and contribute in a meaningful way to the community.

#### **4.5.3**

State funded education outreach programmes should be implemented for refugee women who are unable to attend classes.

#### **4.5.4**

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Kensington Borough, London. Service user consultation and participation underpins all project actions and planning and the centre trains and recruits service users for posts in their project whenever possible.

Refugee women should have the same access to educational services as Irish citizens and child-care services should be available in the communities where refugee women live.

#### **4.5.5.**

Refugee women should be consulted at all stages of the planning, implementation and evaluation of education programmes designed for them. Otherwise, resources may be wasted on unsuitable projects.

### **4.6 Employment**

#### **4.6.1**

Few women refugees or asylum seekers<sup>34</sup> have been able to obtain employment. This is due to, among other things, restricted access to English language classes and training opportunities for asylum seekers.

#### **4.6.2**

Asylum seekers should be permitted to work within a maximum of six months of arriving in Ireland. This should include the option of part-time work. Full information on the right to work should be available to asylum seekers and employers should be informed about their rights and duties. Asylum seeking women should be given full access to FAS schemes and other State-funded employment initiatives<sup>35</sup>.

#### **4.6.3**

The procedure for the recognition of professional qualifications requires simplification and expedition.

#### **4.6.4**

Refugee women should be entitled to primary social welfare, secondary benefits and state-funded childcare when they take up employment.

### **4.7 Childcare**

#### **4.7.1**

Lack of childcare facilities present a major obstacle to women who wish to avail of education and training opportunities, as many refugee women do not have recourse to assistance from an extended family<sup>36</sup>. Child care facilities should be provided with language classes or other training

#### **4.7.2**

Refugee and asylum seeking women should be consulted with regard to the provision of appropriate child-care.

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<sup>34</sup> Since June 1999, persons who have applied for asylum before the 26th of July 1999 and have been in the asylum procedure for at least one year are permitted to work.

<sup>35</sup> FAS has established two units, one in Tallaght and one in Blanchardstown, dedicated to refugees and asylum seekers with the right to work. The units provide training in English language, computers and CV preparation. The units work closely with the Job Placement Unit to place persons in suitable employment.

<sup>36</sup> The lack of childcare facilities is identified by Programme refugees as a major barrier to learning the language. ZENA Project Report, *Barriers and Needs of Bosnian Refugee Women with Regard to Education, Employment and Social Inclusion*, (1999).

### 4.7.3

Funding should be made available for the refugee community to provide culturally appropriate child-care.

## 4.8 Integration

The 1951 UN Convention and the 1967 Protocol relating to the Status of Refugees, the 1948 Universal Declaration of Human Rights and other international legal instruments provide for the integration of recognised refugees<sup>37</sup>. Integration is a dynamic, two way process which requires the host community to adapt to changes in the ethnic profile and to accept refugees into the community and refugees to adapt to the lifestyle of the host society without losing their own cultural identity<sup>38</sup>.

The Interdepartmental Working Group on Integration adopted the following definition of integration in the Irish context:

*"Integration means the ability to participate to the extent that a person needs and wishes in all of the major components of society without having to relinquish his or her own cultural identity."*<sup>39</sup>

### 4.8.1

The phase of reception should be recognised as an integral part of the integration process of refugees, in particular given the current length of the asylum determination procedures.

### 4.8.2

All integration programmes should incorporate a gender perspective and involve refugee women in the design and implementation of such programmes.

### 4.8.3

All integration programmes should be based on the recognition that refugees are individuals with particular needs and service requirements.

### 4.8.4

Funding should be made available to develop refugee community groups and organisations, including women's groups.

### 4.8.5

Citizenship must be recognised as a key factor for facilitating integration. Article 34 of the 1951 UN Convention recommends that states facilitate the "...assimilation and naturalisation of refugees..." and "...make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings..."

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<sup>37</sup> See for example Article 34 of the Convention relating to the Status of Refugees, 1951 and Article 14 of the Universal Declaration of Human Rights 1948.

<sup>38</sup> European Council for Refugees and Exiles, *Position on the Integration of Refugees in Europe*, (Sept 1999).

<sup>39</sup> Department of Justice, Equality and Law Reform, *Integration - a two way process*, Report to Minister for Justice, Equality and Law Reform by the Interdepartmental Working Group on Integration of Refugees in Ireland, p.9.

#### **4.8.6**

The development of a welcoming inclusive society must be recognised as a key priority by the Government and other institutions. Intercultural education at schools and the workplace should be promoted with the active involvement of the social partners.

### **4.9 Racism and Discrimination**

#### **4.9.1**

Any legislation that is implemented to fight racism and discrimination should be gender proofed so as to include asylum seeking and refugee women's experiences. Moreover, this legislation should apply to both EU and third-country nationals residing within the state without distinctions or exclusions between citizens and non-citizens.

#### **4.9.2**

Refugees and asylum seekers should be involved in the design and implementation of anti-racism programmes.

#### **4.9.3**

Programmes should be put in place to inform asylum seekers and refugees of their rights under anti-discrimination and equality legislation.