

Fact sheet EUAA/IAS/2023/16 July 2023



Protecting women and girls in the asylum procedure

The information presented in this fact sheet is extracted from the <u>Asylum Report 2023</u> and covers developments in 2022 and early 2023.

Women and girls throughout the world may be subjected to intense forms of cultural, structural and direct violence. Gender-based violence may include – but is by no means limited to – sexual abuse and exploitation, rape, female genital mutilation/cutting (FGM/C), human trafficking, harassment and domestic violence, as well as social stigmatisation and marginalisation, and related psychosocial consequences.

Such traumatic experiences need to be taken into consideration while trying to understand and assess a person's need for protection. Likewise, these realities need to be included in the development of protection solutions to properly cater to the needs of survivors of gender-based violence. It is fundamental that gender considerations are integrated into the asylum procedure, even when a specific asylum claim is not clearly gender-related per se.





Key developments extracted from the Asylum Report 2023

Data

- Just 29% of asylum applications were lodged by women and girls in EU+ countries in 2022.
- One-third of all decisions on asylum cases were issued to women and girls in 2022. Thus, more men were awaiting a decision on their application than females, accounting for 7 in 10 pending cases. However there were some exceptions. There was a gender balance for pending cases for many Latin American applicants, such as Colombians, Peruvians, Salvadorans and Venezuelans.
- In 2022, more women and girls received positive decisions on their protection claims than a year earlier (45% compared to 41% in 2021). Men and boys, in turn, were granted protection in 36% of all decisions issued on their applications. However, the data available do not indicate which applications lodged by males or females were part of family groups.
- As in the past 5 years, female applicants continued to be somewhat more successful in their appeals. The recognition rate at second or higher instances was 26% for applications by women and girls (stable from 2021), compared to 18% for applications by men and boys (slightly lower than in 2021 when it was 20%). The gap between the female and male recognition rates was similar at first instance (45% and 36%, respectively). However, the data available do not indicate which applications lodged by males or females were part of family groups.
- Transfers of female minors through the Dublin system remained stable compared to 2021, with minor girls representing one-third of all transferred minors. In the lower age group (under 14 years), minor girls represented roughly two-fifths of the total.

Developments in the global context

In 2022, a number of reports by international and civil society organisations highlighted how women and girls are disproportionally affected in displacement situations. Relevant initiatives were launched by various stakeholders to increase understanding of the gender dimension in the context of displacement and enhance capacity to address gender-related considerations in international protection processes.

In the context of South America, Amnesty International reported on the daily discrimination and direct violence that Venezuelan refugee women and girls faced in public and private spaces in the host country – including within their families and workplaces – due to their gender and nationality. The report indicates that Colombia and Peru fell short of ensuring protection to these women, without effective access to the asylum procedure and to justice and health systems for survivors of gender-based violence.¹

- The International Rescue Committee analysed that the extreme drought in east Africa led to increased violence against women and girls, including in refugee camps. Combined with the economic downturn resulting from the COVID-19 pandemic, the drought forced women, who are in charge of providing food and water to their families, to travel further from home in search of provisions, thus being exposed to higher risks. As families migrate in search of resources, children especially girls are dropping out of school and find themselves in unfamiliar and risky territories.²
- CARE published a brief on the link between food insecurity and gender-based violence, which is also catalysed by other parameters, such as discriminatory social norms, environmental degradation and a lack of income opportunities. Examples were given of cases in Afghanistan, Bangladesh, Burundi, the Central African Republic, Ethiopia, Rwanda and Somalia.³ In Somalia, CARE's research indicated a staggering 200% increase in violence against women and girls between 2021 and 2022, particularly intimate partner violence and rape.⁴
- Apart from gendered analysis for a better understanding of the gender dimension in the provision of protection solutions, key recommendations and guidance produced in 2022 stressed the importance of including a gender perspective in asylum procedures. In May 2022, the Committee of Ministers of the Council of Europe adopted a new recommendation on the protection of rights for migrant, refugee and asylum-seeking women and girls. The recommendations define measures to better respond to their needs and the challenges faced by them.⁵
- To foster integration prospects in host societies, the 'WorldPlaces' project developed a toolkit for the meaningful engagement of migrant, asylum-seeking and refugee women at the workplace. The project involves national partners from a number of countries and European-wide organisations, such as the European Network of Migrant Women.
- Relevant country of origin information (COI) is needed to fully understand and assess protection-related needs of women and girls. To this end, the EUAA published COI focusing on FGM/C in Mali⁷ and in Ethiopia.⁸
- EIGE announced new research to map applicant and beneficiary women's access to specialised health care services, in particular related to reproduction and sexual health. The outcome of the research is planned to be published in 2023.9

EU response to female applicants from key countries of origin

Afghanistan

Civil society organisations expressed concern that more could have been done for Afghans wishing to come to Europe through legal pathways to protection, such as facilitating family reunification, establishing community sponsorship schemes and opening education and labour pathways, particularly for women whose education has been disrupted.¹⁰

- In Sweden, a new legal position on the examination of protection needs for citizens from Afghanistan, in particular the situation of women and girls, was published on 6 December 2022. According to the legal position, the fundamental rights of women in Afghanistan are violated, therefore women and girls from Afghanistan seeking international protection should be recognised as refugees on the grounds of membership in a particular social group. The new legal position allowed for the reexamination of previous cases.¹¹
- In December 2022, the EUAA completed the Country Guidance report on Afghanistan, ¹² and the recommendations were followed soon after by Germany who announced in early 2023 that it would change its policy on Afghan women, adapting its decision-making practice towards this profile of applicants.
- Similarly, in Denmark, the Refugee Appeals Board eased evidentiary requirements for this profile of applicants in December 2022¹³ and subsequently decided to change the Danish practice and as a main rule provide refugee protection to Afghan women and girls solely because of their gender. This was applied to all pending cases and cases which received a negative decision were reopened for this profile of applicants. In February 2023, the Refugee Appeals Board granted international protection to an Afghan woman and her daughter following the change of practice in Denmark.
- The Immigration Service in Finland announced in February 2023 that gender alone would constitute a sufficient reason to grant protection to Afghan women and girls.

 In December 2022, the Immigration Service updated its guidelines on processing applications from Afghans of Hazara background, considering that their situation had deteriorated in Afghanistan. This aspect was highlighted in the overall assessment of protection needs and individual circumstances which increased the risk of persecution, including gender, participation in religious activities and living in an area where the Islamic State—Khorasan Province (ISKP) had operational capacity and carried out attacks. The Finnish Immigration Service also announced in March 2023 that it had gathered sufficient, updated country information from Afghanistan on the security situation of different provinces and had been able to start making decisions for all Afghan applicants, for some of whom decision-making had been suspended since July 2021.

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- In Germany, a new federal admission programme was launched in October 2022 to approve the admittance of around 1,000 vulnerable Afghan nationals per month. The target group is Afghans who have exposed themselves to a particular risk through their commitment to women's and human rights or their work in the spheres of justice, politics, the media, education, culture, sport or academia, and are thus vulnerable. The programme also targets persons who are particularly vulnerable due to their gender, sexual orientation, gender identity or their religion. Special focus is placed on serious individual women's rights violations and homophobic or transphobic human rights violations. Under this programme, submissions are done by authorised agencies and NGOs with experience in Afghanistan, and not by UNCHR.¹⁷. ¹⁸
- The Austrian Supreme Administrative Court referred two questions to the CJEU for a preliminary ruling (C-608/22 and C-609/22), inquiring whether the situation of Afghan women in their country of origin could be regarded as sufficiently severe to qualify as persecution. The court also asked whether it is enough that a woman is affected by the

measures merely on the basis of gender or if her individual situation still needs to be assessed.

UNHCR updated its Guidance Note on the International Protection Needs of People Fleeing Afghanistan, in which it analysed the situation of women and girls and highlighted other profiles with increased protection needs, such as Afghans associated with the former government or with the international community, former members of the Afghan national security forces and Afghans associated with the former international military forces, journalists and other media professionals, human rights defenders and their defence lawyers, members of minority religious or ethnic groups, and members of the LGBTIQ community.¹⁹

Ukraine

- With the mass arrival of displaced persons from Ukraine, UNHCR called for measures to quickly identify, mitigate and respond to risks of gender-based violence, exploitation, abuse and the trafficking of women and girls.²⁰
- Since persons in need of temporary protection comprised mainly women and children, EU+ countries needed to adjust their support services in 2022, which were generally geared towards applicants for international protection who are predominantly men.²¹ Women and children fleeing Ukraine were at a heightened risk of being trafficked, so several EU+ countries revised legislation, policies and practices on prevention and identifying victims more rapidly and providing them with adequate support.²²
- Combatting the trafficking of human beings remained at the forefront of discussions in 2022 as a shift in patterns was noted.²³ The COVID-19 pandemic had spurred exploiters to turn increasingly to online activities, which made it more difficult to identify and protect victims.²⁴ Traffickers also began to target new travel routes to recruit victims, such as those taken by displaced persons from Ukraine to seek safety. (See also the EUAA's "Identifying and supporting victims of human trafficking in the asylum procedure, Situational Update No 17" for more detailed developments in 2022.)

Developments in EU+ countries

- In **Ireland**, 124 community projects were chosen to receive EUR 566,500 under the Communities Integration Fund to support the integration of beneficiaries of international protection and migrants, with priority given to projects that involved women, children and youth, labour market integration and community volunteering.²⁵
- On the occasion of International Women's Day, the **Belgian** CGRS provided an overview of the authority's activities related to supporting women and girl applicants. The gender unit, which was created in 2005 and operates through geographical and horizontal sections of the CGRS, is involved in designing the content of draft directives. These aim to advise protection officers and identify and relay their needs to better manage these files, as well as to monitor the quality of files related to gender.²⁶
- The NGO NANSEN published an analysis of jurisprudence related to FGM/C in **Belgium**. The organisation noted that authorities provide protection to women and girls in a broad manner, but a more coherent approach is needed to address these claims.²⁷ In their

shadow report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), NANSEN made recommendations on how the authorities can improve the use of medical reports in FGM/C cases.²⁸

- The **Luxembourgish** government adopted a proactive approach to raise awareness about the impact of FGM/C. The National Reception Centre has collaborated with the Group for the Abolition of Female Genital Mutilation since 2017, and training on this profile of applicants is compulsory for staff working with women and girls in reception.
- In accordance with the **Swedish** government's national strategy for preventing and combating men's violence against women, the Swedish Migration Agency continued its collaboration with other national authorities in various government assignments. Efforts mainly focused on training staff and adequately informing applicants. The agency's website includes information on domestic violence and support resources, in order to encourage women to seek support.
- The Council of Europe's Expert Group on Action against Violence against Women and Domestic Violence (GREVIO) published its baseline evaluation report on **Switzerland** in November 2022. The group encouraged Swiss authorities to improve the identification of cases of violence against applicant women and assess whether countries of origin are able to provide effective protection.²⁹
- The implementation of the **Spanish** Protocol against Gender Violence in the Reception System continued,³⁰ with support from UNHCR³¹ and NGOs, such as CEAR.³² The Spanish Ombudsperson reiterated concerns about deficiencies in the reception of women and children arriving to the Canary Islands by boat, which in some cases led to their falling victim to trafficking. Accem reported that on mainland Spain the police dismantled a child trafficking network, where the victims were accommodated in a reception facility in Madrid.³³
- The AIDA report for **Portugal** highlighted similar concerns, noting that many children absconded from reception and were potentially at risk of trafficking.³⁴
- French authorities focused on the creation of suitable accommodation for different profiles of applicants, and since 2020, 300 reception places have been made available for female victims of violence or trafficking.
- In **Malta**, as part of a large-scale refurbishing and restructuring process of all detention facilities, the construction of a new female compound started in 2023.
- Following the crackdown of demonstrations in Iran through violent means, the Norwegian Organization for Asylum Seekers (NOAS) requested the Norwegian Immigration Service to reassess cases of applicants from Iran, particularly women who fled gender-related persecution, political opponents, activists for minority rights, converts and those who were politically active in **Norway** against the Iranian regime.³⁵

Integration into the labour market

- The **Swedish** Public Employment Service published a report showing an important increase in the number of unemployed people who lack upper secondary-level education, with the majority of them being female beneficiaries of international protection. The report argues to establish more efforts to identify and eliminate obstacles for these women to enter the labour market.³⁶
- The **Nordic** Council of Ministers published a comparative analysis of the labour market integration of beneficiaries of international protection between 2008 and 2019 in Denmark, Norway and Sweden. The study found that there are substantial earnings and employment gaps between refugee men and women, but these gaps narrow somewhat after several years of residence.

Court rulings in 2022 related to the protection of women and girls

- In <u>H.M. and others v Hungary</u>, the court observed that a pregnant mother had received the necessary medical attention. Nonetheless, the constraints she had to suffer during the advanced stage of her pregnancy (such as the conditions in the transit zone, as well as seeing her husband handcuffed and on a leash) resulted in anxiety and mental issues that were serious enough to find a violation of the European Convention on Human Rights (ECHR), Article 3.
- The National Court of Asylum (CNDA) in France granted international protection to a woman, holding that she belonged to the particular social groups of Ethiopian women and girls having escaped forced marriage and Ethiopian women, adolescent and children of Amhara ethnicity at risk of FGM/C. The court underlined that the authorities in the country of origin were powerless to provide effective protection to victims.
- In another case, the CNDA <u>granted</u> international protection to a young girl, recognising she belonged to the particular social group of Egyptian women and children who are exposed to the risk of FGM/C. The court also considered that her maternal aunts supported this practice and that her father, a refugee in France, would be unable to protect her.
- The CNDA was also asked to <u>review</u> the case of a woman whose application based on a risk of forced marriage and FGM/C was rejected at first instance, but on appeal, she claimed that her daughter, born after the first instance decision, had her own fears of persecution due to FGM/C. The court observed the absence of special provisions for this situation and concluded that the child's claims should be examined in a separate, child-specific asylum application.
- The Irish High Court <u>quashed</u> the International Protection Appeals Tribunal's (IPAT) decision on a claim by a Nigerian family whose daughters were at risk of FGM/C by family members if returned. The High Court concluded that IPAT did not consider all documents submitted by the applicants, did not determine the validity of one document and incorrectly stated that the piece of document was post-dated after their departure for Ireland.

- The Irish High Court <u>sent back</u> a case to IPAT, as it failed to adequately consider the need for a hearing in the case of an applicant who was a victim of domestic violence in Georgia. The court acknowledged that there was no statutory right to a hearing in an appeal for applicants from a safe country of origin. However, in the particular case, the applicant submitted additional written evidence and IPAT modified its reasoning for the rejection compared to the IPO, but without allowing the applicant to clarify some additional adverse findings. In addition, IPAT did not make a reference to the applicant's request to submit further medical evidence.
- The court sent back a similar <u>case</u> to IPAT, as it was unclear how the tribunal approached the concept of a safe country of origin and the availability of state protection for another victim of domestic violence from Georgia. In another <u>case</u>, the High Court quashed IPAT's decision to reject the claim of a victim of sexual abuse and rape in Georgia. The court found that IPAT was incorrect in concluding that the applicant was not credible, as her husband did not mention this attack in his own international protection claim and she had not sought to call him as a witness.
- The Irish High Court <u>confirmed</u> IPAT's decision to reject an application from a mother and daughter from Zimbabwe, claiming that the father would subject the daughter to forced marriage. The court noted that the applicant's general credibility must be established, so that the benefit of doubt could be applied for undocumented aspects of a claim, and the applicant in this case failed to show the burden of proof which was resting on her.
- The Federal Administrative Court in Austria concluded that having to watch one's daughter undergoing FGM/C amounts to the parent's persecution.³⁷
- The Danish Refugee Appeals Board <u>reopened</u> the case of a woman whose daughter was at risk of FGM/C in Somalia, following a <u>communication</u> from the UNCRC in 2021. The committee had assessed that the board failed to consider the best interests of the child and ensure the child's well-being upon a return. The board considered the parents' will and ability to withstand social pressure and noted that the girl's father resided in the United States and her mother would need to face the pressure on her own. Thus, the board concluded that the girl would be at risk of FGM/C and should be given a residence permit.
- The Danish Refugee Board <u>reopened</u> another case, following a <u>communication</u> from the UN Committee on the Rights of the Child (UNCRC) in 2022. The committee disagreed with the board's original conclusions that the applicant and her daughter could receive state protection in India against the husband's violence. The committee reiterated concerns about widespread violence, abuse and neglect, the lack of implementation of the Domestic Violence Act and the deeply-entrenched patriarchal attitudes of police officers, prosecutors and judges who handle domestic violence cases. Consequently, the Danish Refugee Board re-examined the case and concluded that the applicant and her daughter would be in a concrete and individual risk of abuse if returned to India.
- When authorities assess the availability of internal protection alternatives for victims of domestic violence, the Supreme Administrative Court in Lithuania held that they must specifically examine what consequences the applicant may face if she requested assistance.

- The Dutch Court of The Hague <u>considered</u> that the State Secretary did not sufficiently investigate a case and required an extreme threshold from a female rape victim to decide that Armenia was a safe country of origin in her specific case. The court underlined that the police would have been the competent authority to investigate, and complaining to the Ombudsperson or to the public prosecutor service was not an adequate way to prevent imminent danger.
- The High Administrative Court of Lüneburg in Germany <u>rejected</u> the appeal of a female Eritrean victim of violence who sought refugee status instead of subsidiary protection. The court concluded that women in the Eritrean national service who are victims of sexual assault do not constitute a particular social group, as a clearly defined identity is missing and they are not regarded as different by the rest of the society.
- The Tribunal of Genova in Italy <u>overturned</u> the first instance authority's decision and granted international protection to a victim of trafficking from Nigeria. Contrary to the asylum authority, it considered that the applicant's statements were sufficiently detailed and credible, while the anti-trafficking centre highlighted several indicators which supported that the woman was a victim of forced prostitution. The tribunal noted that these elements also explained the woman's evasive behaviour and contradictions in her story.
- In Austria, the Supreme Administrative Court <u>confirmed</u> that even a very general, unspecified fear of sexual assault would allow an applicant to request a case officer of a certain sex, as provided by law. This specific provision was analysed in detail in light of recent jurisprudence on Blog Asyl.³⁸
- Italy adopted a National Action Plan 2022-2025 with long-term strategies and actions aimed at raising awareness, better prevention and the social integration of victims of trafficking.³⁹ In line with this, Italy's civil courts granted protection to two Nigerian women who were victims of sexual exploitation and prostitution, as they would either risk an act of persecution on grounds of membership of a particular social group or be re-trafficked if returned to the country of origin (see here and here).

To search for more developments by topic, country or year, consult the <u>National Asylum Developments Database</u>.

To read more case law related to asylum, consult the EUAA Case Law Database.

Sources

Please see <u>Sources on Asylum 2023</u> for the full list of over 1,200 references which were consulted for the Asylum Report 2023.

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