

Fempower



A MAGAZINE PUBLISHED BY THE WAVE OFFICE

Violence against undocumented migrant and refugee women in Europe and their human rights





»La mujer en resistencia blanco de la vida diaria y cotidiana, en resistencia está con paso firme como guerreras Amazonas.

La mujer en el blanco, en todas las edades, en todas las pieles, en todos los países, la mujer está en resistencia porque nació con la marca de la desigualdad, la mujer resiste y se defiende, su escudo es ella misma, la mujer como bandera de lucha, en contra de seguir siendo el blanco.

Ningún ser humano es ilegal, por ende la mujer resiste y se abre camino, amplía su territorio, busca su alimento y genera su nueva vida, la mujer recorre el mundo para dejar su marca para aprender y para enseñar, la mujer lucha constantemente por equilibrar la vida, la tierra y la justicia.»

The woman engaging in white resistance throughout daily, everyday life, is resisting at a steady pace, similar to Amazon warriors.

The woman in white, at any age, having any type of skin colour, in every country, finds herself engaging in resistance because she was born wearing the sign of inequality, the woman resists and defends herself. Her shield is herself, as if she were a banner for the struggle against continuing to be 'the white'.

No human being is illegal; therefore, the woman resists and makes her way through the world, expands her territory, looks for nourishment and regenerates her life. The woman travels around the world to leave her trace, to learn and teach others, the woman constantly fights to balance life, the earth and justice.

The mural is located in Hill Larrain, Valparaíso – Chile. A detailed biography of the artist is available on page 27.

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Editorial

This year's issue of the WAVE *Fempower* magazine addresses the topic of ***Violence against undocumented migrant and refugee women in Europe and their human rights***. Most migrant women come to Europe with valid paperwork to reside or work in the country of residence. However, their permits are often dependent. This means that their permit to stay in a country frequently ties them to their employer or partner. The lack of an independent work or residence permit and inflexible and restrictive visa regimes create particular challenges for migrant women. It increases their risk to violence or exploitation.

Survivors of violence whose immigration status is tied to an abusive spouse or employer, or who are undocumented, face not only the threat of repeat violence, but also the ever-present threat that their status will be used as a tool of intimidation and coercion. Reaching out for help can mean for them detention and deportation, separation from their children, the loss of their livelihoods and their dignity. Adolescent girls constitute a particularly vulnerable group among female refugees and asylum seekers. Many a time during wars and displacements, girls are left vulnerable to exploitation such as human trafficking and gender based violence, including early and forced marriage.

A total of nine articles have been submitted by various authors from EU and non-EU member states, each offering a unique and country-specific insight into the situation of this vulnerable group of migrant women. This topic was also a central focus of the activities undertaken within the frame of our pan-European WAVE Step Up! Campaign in 2017, together with PICUM (Platform for international cooperation on undocumented migrants). As part of the Step Up! Campaign, PICUM and WAVE are coming together to strengthen the rights and improve access to services for undocumented migrant women and women with a precarious immigration status.

Chapter seven of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) specifically deals with issues related to migration and asylum in the context of violence against women. It imposes obligations on State parties to ensure that victims, whose residence status depends on that of a spouse or partner, are granted under difficult circumstances autonomous residence permits. Furthermore, article 60 urges States to ensure that violence against women is recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection. In spite of the fact that many European states have signed and ratified the Istanbul Convention, implementation is lacking in many places. Governments are yet to allocate sufficient resources to ensure that specialist support services for women and their children are easily accessible without discrimination, irrespective of a person's migration status and that gender sensitive reception and asylum procedures are in place.

As such, the precarious situation of asylum seeking and undocumented migrant women persists in Europe. They are often unaware of their rights to protection and support in the country of their current residence. Language barriers, mistrust, and other structural barriers – such as discrimination, racism and xenophobia – often further prevent women from accessing much needed support. Even when support services are available, undocumented migrant women are often reluctant to approach these, as many have been told by their abusive partner/exploitative employer, that nobody will believe them and that they will be arrested or deported immediately should they seek any form of assistance. These fears are reinforced when women have tried to access support at some point of their journey, and experienced discrimination or racist abuse by e.g. a police or immigration official or social worker, as a consequence. Therefore, many asylum seeking and undocumented migrant women find themselves in a situation of economic distress and dependency, be it through unemployment or exploitation, having no, or little, access to any kind of support system. Hence, instead of turning to police authorities or shelters, women feel they have no other choice but to continue staying in their abusive relationships.

The current situation has to change, since policies aimed at guaranteeing asylum seekers and refugees' rights and wellbeing in their host countries cannot remain gender-neutral. As demonstrated by the following articles, women and girls face gender-specific challenges in any host country. Therefore, reception and integration policies that are not gender-sensitive are bound to fail. Women asylum seekers who have not obtained refugee status in their host countries and are forced to live in a situation of uncertainty that makes them prone to gender based violence are not likely to be successfully integrated in any society. Furthermore, this situation can also have repercussions on their children. The level of discrimination encountered in the host country, access to decent employment, and the ability to actively participate in society are all factors that influence trust in the system and self-confidence.

All of these elements contribute to a person's successful integration in a new country. Undocumented migrant and refugee women, who may have been affected by gender based violence in their countries of origin or other transit countries, are in desperate need of support and protection when reaching European territories.

We would like to express our gratitude to the authors who have submitted contributions to this issue of the *Fempower* magazine. We hope that these informative and inspiring stories about migrant women and the barriers they encounter in host countries will bring the need of having gender sensitive reception facilities, and easily accessible specialist support services for undocumented migrant women, and women with a precarious immigration status to the forefront of migration policy negotiations.

Andrada Filip (WAVE office)

The legal barriers affecting undocumented women in Italy

Marina Della Rocca

D.i.Re Donne in Rete contro la violenza – Italy

Miriam¹ is a young migrant woman who turned to a women's anti-violence centre in Northern Italy to escape the violence perpetrated by her husband. She held a residence permit for family reunification and had entered the shelter three months before her permit was due to expire. Miriam had two possibilities to remain in Italy. The first was to find a permanent job before her permit expired and show the authorities that she would earn enough money to maintain herself and her daughter. The second was to hope that the juvenile court would determine that she could obtain the custody of her child, who was born in Italy, and then extend her permit for family reasons.

The woman attempted to find a job but was facing many difficulties. She did not speak Italian due to the isolation imposed by her husband while living together in Italy and she was systematically refused work by local employers on what she believed were racial grounds. Given the bureaucratic nature of court procedures and the time required to finalize judicial orders, waiting for the court's decision was not an option for her. Furthermore, it was not certain that the court would take into account the fact that domestic violence had occurred, nor was it certain that she would obtain custody of the child and the related permit to remain in Italy. The woman was unable to secure a job and could not wait for the tribunal decision. She had no choice but to return to her violent husband.²

In this story, legal restrictions represent the most difficult challenge for the woman to overcome a situation experienced by many migrant women who seek help in anti-violence shelters in Italy. Italian immigration law³ foresees a residence permit for family reasons to be directly connected to the permit of the spouse. This makes it almost impossible for female victims of domestic violence to pursue divorce proceedings, unless they find work beforehand and are able to convert the family permit into a working permit. In reality, obtaining the working permit is nearly impossible, because most migrant women who are victims of violence cannot find stable employment or do not earn enough money to support themselves and their children. Given the widespread unemployment in Italy and the racism of prospective employers, these women are left with nowhere to turn to. Alternative options include marriage to an EU citizen or someone who holds a long-term residence permit, or obtaining a one-year permit for humanitarian reasons, that include domestic violence and human trafficking. In order to apply for the one-year permit, the woman must first report her situation to the police, who are then required to verify whether the woman remains in danger. If the woman does manage to obtain the permit, her legal situation continues to be unstable. In order to fulfil the requirements of the long-term residence permit, which is obtainable only after five years

of continuous residence, she must then prove that she has ongoing work, a stable income, adequate accommodation, and has passed an Italian language exam.

In Italy, migrant women suffering domestic violence are confronted with a myriad of legal barriers. They are left in a legal limbo, which often turns into paralyzing uncertainty. Many then come to view the violence of their husbands as the lesser evil. Sariah, a woman who entered a women's shelter with her two children, and who, like Miriam, entered Italy through family reunification, described her situation as 'torture'. She explained that the first time she had escaped from her husband, she turned to the police requesting a renewal of her residence permit. The police officers told her it would be impossible for her to renew the permit, because she did not work, and she did not have a place to live. Sariah's only option was to return to her husband. She eventually obtained her residence permit and today she lives alone with her two children, free from her husband's violence. However, the uncertainty of her legal status has become a never-ending story, and it has been impossible for her to restart a new life without the certainty of permanent residence.

When a woman escapes domestic violence in Italy, her socio-economic status declines immediately. This situation is exacerbated by the economic situation in Italy where unemployment is high and access to jobs⁴ is limited. Many women, especially migrant⁵ women, lose their work when they have children. They are generally employed as care assistants, domestic workers or in the textile industry. This work is often undeclared and places women at constant risk of exploitation, because they have no access to labour rights or health protection. These factors prevent women from applying for working permits, forcing them to be economically and legally dependent on their husbands and thus, exposing the indissoluble tie between economic and legal barriers that will impact them when they attempt to escape from domestic violence.

In 2017, a new Italian law was introduced⁶ to control the diffusion of migrant detention centres, a situation that will worsen the possibility for asylum seekers to appeal against the denial of their refugee status. Many Italian organizations that support migrant women have attempted to highlight the institutional racism of current migration laws and procedures, all of which increase the vulnerability of migrant women and asylum seekers to different forms of violence. These centres also report cases of undocumented women who have been brought to detention centres after reporting to the police that they had experienced violence from their partners, employers, or exploiters. Human Rights Watch has also denounced the condition of female asylum seekers in reception centres in Italy, highlighting a lack of financial and human resourc-

es and specialised personnel capable of guaranteeing adequate assistance to these women, particularly those who were victims of sexual violence along the migration route⁷.

In conclusion, Italian immigration laws are not markedly different from other Schengen countries. However, the problems are worse in Italy due to the impact of an ongoing economic crisis, high unemployment rates, the highest in Europe, a labour market that exploits workers, and migrant reception policies that fail to address the needs of the most vulnerable persons. Italian migration laws are in breach of the Istanbul Convention⁸, forcing many undocumented migrant women to remain silent about the violence they have suffered, and instead creating further obstacles when they attempt to escape from violence.

- 1 The women's names reported in this article are fictitious.
- 2 This story, like the other experiences cited in the article, are extracted from my Ph.D. thesis at the Free University of Bozen-Bolzano, which explored the reproduction of structural barriers in supportive practices toward migrant women suffering domestic violence, and was carried out from 2014 to 2017.
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- 7 Retrieved from <https://www.hrw.org/news/2017/07/05/when-rape-survivors-cant-ask-help> on 7/27/2017.
- 8 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence



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The 16 Days of Activism against Gender Violence Campaign started off strong in Italy thanks to D.i.Re Donne in Rete contro la violenza! 150.000 women marched in Rome against violence on November 25th, 2017. At the Italian parliament, 1.400 women were invited by President of the Chamber of Deputies Laura Boldrini for the International Day for the Elimination of Violence against Women. It was the first time the Italian Parliament was entirely occupied by women.

The impact of a separation or divorce in cases of domestic violence on refugee status determination

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This article seeks to outline the impact of a separation/divorce of a woman from her husband on refugee status determination (RSD) in cases where women have experienced violence by their husband in their country of origin and/or after arriving in the receiving country. An overview of case law of the Austrian Federal Administrative Court will be provided and in the second part main gaps in practice are summarized.

Women's access to effective (legal) protection and realization of their rights

Women who seek to be separated from their husband due to domestic violence might have to overcome nearly insurmountable structural and/or legal barriers in many of their countries of origin. The concept of marriage as a bond or an institution ensuring social structure and stability is well acknowledged and might support different purposes such as conflict resolution, clarification of ownership or property or the (expected) harmony of a community in many countries of origin of asylum seeking women, while women's or girls' consent to marry might have been subordinate or unimportant.

The concept of marriage as a guarantee for social stability is often reflected in traditional norms, social norms and/or customary law which are deeply rooted in society in different countries or regions e.g. Kanun in Kosovo/Northern Albania, Adat in Chechnya or the Pashtunwali in Afghanistan, as well as religious laws such as Hanafi law or Shafi law in Sunni dominated Islamic countries or Ja'fari law in Shia dominated Islamic countries.

The wish of a woman to be separated or divorced from her husband therefore might have far-reaching implications on the families, communities and society in a given country. Serious problems between married partners such as domestic violence, or the wish for separation or divorce might be perceived as "family matters" and might therefore be referred to traditional and/or religious informal or quasi-formal instances in countries with plural legal systems aiming at re-establishing the balance within the community and/or family (jirga courts in Afghanistan, Salish courts in Bangladesh, Xeer system in Somalia, etc.). Differentiation between the private and the public sphere in a given society might make it even more difficult for women to realize their rights, given that "family matters" like a wish for separation or divorce due to domestic violence in many cultural and religious contexts belong to the "private sphere". In addition, women might face multiple structural barriers to even access formal or informal – mostly male dominated – legal systems. Legal consequences, such as maintenance for children and wife or inheritance might remain unresolved or discriminato-

ry against women and children. Far-reaching sanctions of (attempted) separation/divorce such as honour-related violence, forced child removal, harmful traditional practices, etc. might result out of a woman's wish for separation.

On the other hand, formal legal systems might be perceived as ineffective, corrupt or might entail similar discriminatory provisions or sanctions. According to the Afghan Criminal Code, for instance, a woman who ran away from her husband committed the crime of "Zina", which might be sanctioned with death by stoning.

RSD and the impact of a separation/divorce from the husband in cases of gender-based violence

GENDER-BASED VIOLENCE AS PERSECUTION

ACCORDING TO ART 1 GENEVA REFUGEE CONVENTION

Hathaway and Foster translate the concept of "being persecuted" according to Art 1 UN 1951 Geneva Refugee Convention (GRC) as the sustained or systematic denial of basic human rights demonstrative of a failure of state protection and consider that "persecution" comprises two elements: serious harm and failure of state protection, connecting it to the international human rights framework. Case law of Austrian Courts shows that gender-based violence (GBV), such as domestic violence, is acknowledged as "persecution" according to Art 1 UN GRC, which is also in line with Art 60 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

PERPETRATORS AS NON-STATE ACTORS

Understanding "persecution" as serious violation of human rights outlines the role of a state to ensure and secure the rights laid down in international human rights conventions to entail an obligation to protect individuals from violations of their rights in horizontal relationships – e.g. relationships to family members as "non-state actors". The EU Qualification Directive also recognizes that actors of persecution include non-state actors, where protection is unavailable.

Case law of the Inter-American Court of Human Rights as well as the European Court of Human Rights (ECHR) strongly contributed to the evolution of the Due Diligence Principle and thus led to an increased acknowledgment of positive obligations of states to protect, prevent and prosecute individuals from (severe) violations by non-state actors. In consideration of the Due Diligence Principle, Hathaway and Foster however emphasize that the ultimate question in refugee law is not whether the home state has satisfied any particular standard – but if the state is in fact able to protect against a risk of serious

harm, such as domestic violence in spousal relationships. In line with this reasoning, the EU Qualification Directive provides that protection against persecution or serious harm must be effective. According to Hathaway and Foster, the Due Diligence Principle is rather only of evidentiary value in assessing the willingness and capacity of the state to protect. This approach goes along with the UNHCR Handbook, according to which a denial of protection by a given state may confirm or strengthen the applicant's fear of persecution, and may, indeed, be an element of persecution. It can be concluded that in cases with a reasonable likelihood that the woman who seeks separation or divorce due to domestic violence would face serious harm for a convention ground, refugee status ought to be recognized.

NEXUS TO CONVENTION GROUNDS ACCORDING TO ART 1 UN 1951 GENEVA REFUGEE CONVENTION

A divorced woman or a woman who seeks to be divorced might have a specific role in the society of the country of origin – resulting, for instance, from traditional values, social or religious norms. If a separated woman is perceived e.g. as a “woman who breaches social, traditional or religious values” or a “woman outside society” due to her specific social role, a nexus to one of the “convention-grounds” might be established and thus persecution due to one of the grounds mentioned in Art 1 GRC might be established.

The evolution of the concept of membership of a “particular social group” (PSG) as one of the five grounds enumerated in Art 1A (2) of the 1951 UN Refugee Convention has advanced the understanding of the definition of “refugee” as a whole. Two different approaches have been developed on how to determine what constitutes a PSG within the meaning of the 1951 GRC: The “protected characteristics” approach examines whether a group is united by an immutable characteristic or by a characteristic that is so fundamental to human dignity that a person should not be compelled to forsake it. The “social perception” approach examines whether or not a group shares a common characteristic which makes them a cognizable group or sets them apart from society at large. According to the UNHCR Guidelines No. 2, the two approaches ought to be reconciled.

Along with the wish to divorce, there might be a political and religious dimension of a woman's decision to leave and/or file for divorce from her husband. It might be perceived as a violation of traditional values, social or religious norms in her country of origin. Political and religious ideologies of states might be notoriously reflected, particularly in family law, civil law or criminal law. Therefore, a nexus to religiously and/or politically motivated persecution could be established, which is also reflected in case law of the Austrian Administrative Court.

OVERVIEW OF CASE LAW OF THE AUSTRIAN FEDERAL ADMINISTRATIVE COURT

Case law of the Austrian Federal Administrative Court shows that a nexus to the convention ground “membership to a social group” could be established, in the cases of women who filed for divorce due to domestic violence – cases where state protection was considered ineffective to protect from (honour-related) violence in case of (a) return to the home country.

After a remittal from the Higher Administrative Court, the Federal Administrative Court granted asylum in L511 1246498-1, decision of 27.05.2014 – the case of a woman from Turkey who was re-united with her husband in Germany after an arranged marriage in Turkey. The husband was abusive and violent, and the woman filed for a divorce in Germany. Her family in Turkey threatened to kill her, as the woman's wish for divorce was perceived to be in breach of family honour. In this case, the Court clearly outlines that domestic violence amounts to persecution, if there are reasonable grounds to believe that the given state does not provide effective protection from the feared harm of the woman (honour-related violence by the family) due to the divorce she filed in Germany.

In the case W135 1431607-1, decision of 24.11.2014, a woman fled from Chechnya after facing serious violence by her brothers who considered that she violated social and traditional norms and dishonoured the family due to her divorce from her husband who, according to her statement, treated her like a slave. Her daughter was forcibly taken away from her by the family of the ex-husband. The Court finally ruled that domestic violence amounts to persecution according to Art 1 GRC and in addition outlined that „returning women without family support and without support by male relatives” – as a particular social group – are at real risk of facing serious harm in case of return. Asylum was granted.

In the case W166 2007805, decision of 18.11.2014, a woman from Chechnya was cast away by her husband's family as they wanted to hinder her claim for inheritance for herself and on behalf of her son. The woman filed for divorce after she and her son faced serious violence by her husband. The Court granted asylum and found that there are reasonable grounds to believe that the woman, as a “divorced woman without family support”, would not get effective protection from further harm in case of return.

In the case W268 2127664-1, decision of 10.04.2017, the Federal Administrative Court granted asylum to a woman from Iraq who was forcibly married as a minor and faced constant violence by her husband as well as other family members. The Court found that she would not have effective protection in case of (a) return considering her situation as “separated woman without family support.”

In the case L506 1438704-1, decision of 10.03.2015, the Federal Administrative Court found that an Iranian woman and her minor daughter might face honour-related violence from the husband of the woman, because both – woman and daughter – opposed the will of the husband to forcibly marry the daughter. The woman together with her daughter finally left the husband. In the legal reasoning, the Court referred to the likeliness of honour-related killing and found that the woman belongs to the particular social group of a „family member” referring to insufficient, ineffective protection in case of a return. Asylum was granted.

There is well established case law of the Austrian Federal Administrative Court dealing with cases of women from Afghanistan who ran away from their husbands, acknowledging that the wish for (a) separation or divorce has a political and/or religious dimension as well. Furthermore, in this context the Austrian Federal Administrative Court →

→ often followed the approach to investigate the “mindset” of the woman, specifically whether the woman has “internalized” so called “Western values” based on gender equality and the right to self-determination of a woman and other fundamental rights in order to establish the nexus to a PSG of “Westernized women.”

Conclusions and gaps:

ASSESSING THE WILLINGNESS AND ABILITY TO PROTECT OF THE COUNTRY OF ORIGIN

Decision-makers often fail to recognize the social, cultural, economic and psychological dynamics of domestic abuse as well as the impact of a woman’s wish for separation or divorce in a given society as legally relevant for their assessment of state protection. There is a striking failure on this account when it comes to determining if it was reasonable to expect the woman to seek state protection. Furthermore, decision-makers might often focus on a formalistic assessment of a state’s ability and willingness to protect without properly taking into account that the state’s ability and willingness to protect is rather of evidentiary value.

However, information available on the country of origin is often scarce, given that particular traditional, religious or social norms are strongly rooted in the society of the country of origin. Furthermore, evidence assessment might be challenging as claimants are often not able to provide decision-makers with “hard facts”. Hence, assessing the credibility of the claim becomes even more important, considering that women might be traumatized, feel shame, fear, stigmatization or face reprisal. Case law of the ECHR provides guidance on a shared burden of proof as soon as the claim might be substantiated enough.

Contrary to UNHCRs’ position that there is no requirement to prove well-foundedness of the claim conclusively beyond doubt, case law shows that applicants who claim they are victims of gender-based violence often have to meet a particularly high threshold to prove the reasonableness of the claim and the plausibility of risks in case of (a) return to the country of origin.

LACK OF AWARENESS OF JUDGES, RELATED STATE-AUTHORITIES ON POSSIBLE IMPACT OF DIVORCE

The UN 1951 Refugee Convention does not distinguish between persons who flee their country in order to avoid the prospect of being persecuted and those who believe they cannot safely return, when engaging in certain activities. For example, filing for divorce in the receiving country might result in serious (honour-related) violence in case of (a) return to the country of origin.

It is important to raise awareness on the impact of evidence and/or outcomes of court-procedures (family court, criminal court, etc.) and police investigations on RSD. Hence, legal expertise of decision-makers and legal advisors, inter alia about different standards of proof (e.g. “in dubio pro reo principle” in criminal procedures versus “analysis of probabilities” in asylum procedures) but also on complex legal questions related to divorce procedures (e.g. in cases of conflict of laws) as well as on cultural norms and stereotypes is important.

RIGHT TO PRIVATE-LIFE AND THE RIGHT TO A FAMILY ART 8 ECHR

According to Art 34 para. 2 Austrian Asylum Act, asylum can be derived from a family member if the family member hasn’t been charged for a crime in Austria, if a continuation of a “family life” according to Art 8 ECHR is not possible in a safe third country and if no withdrawal procedure (against the holder of asylum) is pending. In cases of experienced domestic violence in Austria, practice shows that decision-makers tend to argue that asylum cannot be derived from the (ex-)husband as a family member as soon as a filed divorce has the force of law in Austria. Gaps prevail in cases where a divorce is not (yet) filed, not yet having the force of law.

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- 6 Hathaway, J. C.; Foster, M. (2014): *The law of refugee status*. Second edition. Oxford University Press, p. 313-315. Grahl-Madsen proposed the notion of “unendurability” in order to correctly interpret the concept of persecution (Grahl-Madsen, A., *The Status of Refugees in International Law: Refugee character*, A. W. Sijthoff, 1966); Art 9 para 2 EU Qualification Directive 2011/95/EU provides a non-exhaustive set of examples and connects the interpretation of persecution to the human rights framework. General Recommendation No. 19, the Declaration on the Elimination of Violence against Women and the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform of Action contributed to recognizing that women are particularly vulnerable to violence in the private sphere at the hands of private actors; see also: Meyersfeld, B. (2012): *Domestic violence and international law*. Oxford, Portland: Hart.
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Opening session at the WAVE annual conference 2017 (30 October – 1 November), Budapest, Hungary.

Nowhere to turn: challenges for women with no recourse to public funds (NRPF) fleeing domestic abuse in England

Charlotte Miles

Women's Aid Federation of England

Some of the most vulnerable women trying to escape domestic violence and abuse in England are unable to access crisis support. Research by Women's Aid Federation of England (WAFE), has identified key barriers to accessing refuge support and one of the most significant is for women with No Recourse to Public Funds (NRPF).

The No Woman Turned Away Project

The data comes from the *No Woman Turned Away* (NWTa) project, funded by the Department of Communities and Local Government (DCLG) in England, which provides crucial additional support to women unable to access a refuge space alongside a detailed study of their journeys. Women for whom the National Domestic Violence Helpline (NDVH)¹ cannot find a suitable refuge space are referred into the project. Across one year the NWTa caseworkers supported 404 women. WAFE have just published a full report based on the experiences of these 404 women, which can be found on the WAFE website: www.womensaid.org.uk/research-and-publications/nowomanturnedaway/

Over a quarter of the women supported by the NWTa caseworkers had NRPF (27%, 110 women), which presented a significant barrier to accessing a refuge space. This article will focus on the key findings from the project relating to women's experiences of seeking refuge who had NRPF.

Women with NRPF fleeing domestic abuse in the UK

Section 115 of the Immigration and Asylum Act 1999 (IAA) states that a person will have no recourse to public funds, which include welfare benefits and public housing, if they are subject to immigration control.² With refugees receiving an average of 89% of their weekly running costs from residents' housing benefit,³ not having access to those funds represents an often insurmountable barrier to accessing a refuge space.

There is legislation in place to protect women with NRPF who are experiencing domestic abuse whose immigration status and right to stay in the UK is dependent on their partners' right to stay in the UK. Women who have leave to remain (the right to live in the UK) as a spouse, civil partner, unmarried or same sex partner of someone who has the right to stay in the UK who are experiencing domestic abuse can apply for Indefinite Leave to Remain (ILR) (permanent residency in the UK) under the domestic violence rule, which would entitle them to access public

funds.⁴ If women who meet this criteria are destitute and in need of financial help, they are able to make an application for temporary leave to remain through the Destitution Domestic Violence (DDV) concession, which allows women to claim benefits (including housing benefit) for three months while their application for ILR under the domestic violence rule is being considered.⁵ However, the application for the DDV concession is often complicated and slow.

Limitations of the DDV concession

Out of the 110 women supported by the NWTa caseworkers who had NRPF, only eight were accommodated in a suitable refuge space, a total of just 7%. Crucially, of the eight who were accommodated in refuge, four had successfully applied for the DDV concession and a further three were in the process of applying. Just one woman who was not eligible for the DDV concession was accommodated in a suitable refuge space, and this was due to social services agreeing to fund the space thanks to the advocacy of the NWTa caseworker.

The majority of women with NRPF who were supported by the caseworkers were not eligible for the DDV concession (67%, 74 women – see Table 1). They were ineligible because their immigration status did not meet the criteria for application.

Table 1: survivors not eligible for DDV Concession (DDVC)

Immigration Status	Number of women	Percentage out of total women not eligible for the DDVC	No. accommodated in refuge
EEA national	35	47.30%	0
Over stayer	13	17.57%	1
Seeking asylum, including National Referral Mechanism for trafficked women	5	6.76%	0
Student visa	1	1.35%	0
Other visa	20	27.03%	0
Total	74		1

Almost half of the women who were not eligible for the DDV concession were European Economic Area (EEA) nationals (47%) who did not have access to housing benefit (see table 1). Women who are EEA nationals are only able to access housing benefit if they have worker status⁶ or are married to an EEA national who has worker status as long as she remains married to him, he remains in the UK and he continues to exercise treaty rights as a qualified person in the UK. For women who are not married to their partner, the only way they can access rights through

their partner is through applying for an 'extended family member' card from the Home Office. However, if the relationship breaks down, they will lose any rights gained through their partner, even if the relationship has broken down because of domestic abuse. The caseworkers were not able to secure a refuge space for any of the women they supported who were EEA nationals with NRPF.

CASE STUDY: MISHA'S STORY

Misha was in the UK on a student visa, meaning that she did not have recourse to public funds, and was ineligible for the DDV concession. Her NWTa caseworker attempted to secure a refuge space for Misha, but they were unable to accept her without any funding in place. In addition, as it was the Christmas period, several of the homeless charities the caseworker tried to contact were not taking calls. As a consequence, Misha spent time sleeping rough in 24 hour food outlets and on night buses, she also slept in a police station for the night, all of which had an adverse effect on her mental health. Unsurprisingly, Misha grew tired of being turned away from services and stopped contacting the NWTa project.

The search for safety

While waiting for a refuge space 18% (20) of the women with NRPF had to call the police to respond to an incident with the perpetrator and 8% (9) were physically injured by the perpetrator, highlighting the exposure to further abuse experienced when there is no quick route to safety. The caseworkers also recorded where women with NRPF stayed while waiting for a refuge space; 35% (38) spent time sofa surfing (sleeping at friends/ relatives' houses), and 11% (12) spent time sleeping rough while searching for a refuge space. The experience of both sofa surfing and sleeping rough not only involves insecurity and poor living conditions, but also leaves survivors exposed to further danger and sexual abuse. There were two recorded cases where women stayed with male strangers, one of whom was fleeing with children. Fortunately, these women were not hurt while staying with the strangers, however, it is clear evidence of the potential for further exploitation at a time of trauma and upheaval, when women fleeing domestic abuse are unable to access safe crisis support.

CASE STUDY: KAROLINA'S STORY

Karolina was living in the UK under a 'family member' visa as her husband was an EEA national. She would have been entitled to housing benefit as her husband had worker status, however, as he was in prison (not for charges around domestic abuse), he had lost treaty rights and not retained this status meaning she had lost her mirror rights. Karolina was experiencing abuse from multiple perpetrators and her husband's (also perpetrator) release was imminent. She was accommodated in a B&B by social services as a short-term solution, with the caseworker predicting that she would eventually be sent back to her home country with her child. This decision could be challenged by the father to stop the child from leaving the country, meaning that if Karolina wanted to stay with her child, she would have to stay in the UK, but would be destitute.

Conclusion and Recommendations

It is clear, women with NRPF who are fleeing domestic abuse are placed in a desperate situation, with many women having no alternative option but to stay with or return to the perpetrator.

It is not acceptable that a survivor's access to safety is determined by her immigration status, therefore, Women's Aid are calling on the UK Government to:

- Urgently introduce measures which address the desperate situation faced by many women with NRPF highlighted in this report to ensure that all women with NRPF fleeing violence can access a refuge space or safe and appropriate emergency accommodation⁷ with specialist support.⁸
- Support training for domestic abuse service providers and statutory services on the immigration rights and entitlements of women fleeing domestic abuse. This would help to ensure that when survivors ask for help they are appropriately advised. The protection of all victims of domestic abuse should be central to the response of all professionals.
- Expand the criteria for the DDV concession to include all women who have NRPF and ensure that applications for the DDV concession are processed in a timely manner.

1 The Freephone 24 Hour National Domestic Violence Helpline (NDVH) is run in partnership between Women's Aid and Refuge. It was established in 2003 and is funded by the Home Office, Comic Relief and London Councils. The purpose of the NDVH service is to deliver a responsive, empowering and effective helpline service that gives women, children and their supporters the confidential support and information they need at the time that they need it. Calls to the NDVH are answered by fully trained female helpline support workers and volunteers.

2 Immigration and Asylum Act 1999, Section 115.

3 Women's Aid Federation England (2016), Survey of members on the Local Housing Allowance Cap.

4 The Domestic Violence rule was introduced in 1999 after an extensive campaign by Southall Black Sisters, a women's organisation working for and with ethnic minority women, calling for reforms to the immigration rules and NRPF requirement to prevent women experiencing violence from facing the stark choice between abuse, deportation and destitution. The Destitute Domestic Violence Concession was introduced in April 2012, following further strategic advocacy from the BME by and for ending VAWG sector, to address the problem of destitution for women under the NRPF rule while applying for an ILR decision to be made. This replaced the Government set up Sojourner Project (set up in November 2009) which piloted this scheme, mainstreaming the financial support provided to those applying for ILR under the DV rule (see Eaves & Southall Black Sisters (2013) Destitution Domestic Violence Concession – Monitoring Research Report: <http://i3.cmsfiles.com/eaves/2013/12/DDV-Concession-Scheme-Monitoring-Report-Final-f14013.pdf>)

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6 To be able to access housing benefit EEA nationals must either have 'worker' status or 'self-employed person' status. To attain either of these status' the individual must meet the 'minimum earnings threshold' where they have to demonstrate that for the last three months they have been earning at the level at which employees start paying National Insurance (£150 a week – equivalent to working 24 hours a week at National Minimum Wage). See: <https://www.gov.uk/government/news/minimum-earnings-threshold-for-eea-migrants-introduced>

7 Safe and appropriate emergency accommodation includes emergency accommodation provided by the local council which meets the needs of the survivor and her children and ensures their safety. As such, it does not include homeless hostels or other accommodation where her safety cannot be assured.



- 8 Ending discrimination on any grounds, particularly with regards to the protection for the rights of victims is a requirement of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence that the Government signed in 2012 and committed to ratifying in April 2017. Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017, April 2017.



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Opening session of the WAVE conference 2017, From backlash to effective response: step up together for the protection of women and girls from all forms of violence

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Group photo with the organisers of the WAVE annual conference 2017, WAVE office staff together with NANE Women's Rights Association.

Shelters for undocumented migrant women in the Netherlands

Rian Ederveen
Stichting LOS

Introduction

Migrant women are powerful women. It requires determination and perseverance to make the journey from your home country to a new and unknown country. Certainly, if it is not clear how the future will look like – asylum seekers and other migrants cannot count on a warm welcome.

Migration legislation is cruel – not everyone who needs it gets a residence permit. The connection between migration legislation and social legislation denies irregular migrant women access to social security, including women's shelters.

Right of residence for women without residence

An undocumented Iraqi Kurdish woman with a minor child had fled from home because of domestic violence (and after her flight also honour crime). She reported to the police, but the women's shelter refused to offer help as this woman did not have a residence permit. Eventually, an application for a residence permit as a victim of domestic violence was submitted by a temporary informal shelter. However, this informal shelter could not provide proper support because of the high risk of honour crime and because the ex-husband was actively looking for the woman and knew the city where she stayed. She eventually got a residence permit.

In 1998, the Netherlands excluded irregular migrants from virtually all forms of social security. This applies, for example, to the right to social assistance, homeless and women's shelters, health insurance and the right to adult education. Obviously, irregular migrants are also not allowed to work legally and pay taxes. The purpose of this legislation was to discourage illegal stay and prevent irregular migrants from extending their stay by making use of social security.

However, the consequence of this legislation in a regulated country like the Netherlands is that irregular migrants are dependent on their social network and illegal structures for their survival. Sometimes, they can stay with acquaintances, but that is almost never possible for a long time. Irregular migrants with money can rent illegally, but they do not have any protection as tenants and can easily lose their residence. When it comes to work, they can use someone else's papers, but, of course, they have to pay the real owner of the papers a part of their earnings. In the private circuit, they can sometimes find work as illegal cleaning aid. In all these cases, they are vulnerable and

can easily be misused. This applies in particular to irregular migrants who are completely dependent on their partner and do not have their own housing or income.

Immigration legislation

An irregular woman from Mongolia was a victim of sexual violence by her landlord. He had forced her to have sex with him and had secretly made a video footage. After moving, he confronted her with the images and threatened to share it with the Mongolian community. Many other Mongolian people also rent properties he owns. The woman reported the threats to the police. The police advised her to search for another residence and to change her telephone number. They did not refer her to a women's shelter. The woman chose not to report, because the threats decreased and she was not convinced of the protection the police could provide.

A. PARTNERS WITH A DEPENDENT RESIDENCE PERMIT

Strict immigration laws make it difficult to legalize the residence of a foreign partner in the Netherlands. Many conditions must be fulfilled: the Dutch partner must earn enough, and the foreign partner must obtain a visa from abroad and pass an 'integration test'. In this situation, the foreign partner is dependent on the partner in the Netherlands for at least five years, before independent residence can be obtained.

B. PARTNERS WITHOUT A RESIDENCE PERMIT

Often partners cannot meet the above conditions, and therefore choose to live together illegally. For example, if the partner's income in the Netherlands is not high enough, the foreign partner is unable to pass the 'integration test', or the threshold for returning in order to obtain the visa is too high. Couples often live together for many years without a prospect to legalization.

C. REJECTED ASYLUM SEEKERS

Finally, there is a large group of rejected asylum seekers who lose their right to shelter at the end of their asylum procedure. Without residence permit, there is no right to work, social services or access to homeless shelters. Living-in, sometimes combined with other personal services, is then the only option left over. These are not relationships that are based on free will. Dependence from the person who offers shelter is very high in such circumstances.

In all situations described above, the foreign partner is in several areas dependent on the partner in the Netherlands. This can easily lead to abuse and domestic violence.

→

→ Practice of assistance for victims of domestic violence with insecure residence

A. PARTNERS WITH A DEPENDENT RESIDENCE PERMIT

A Moroccan woman with dependent residence permit was a victim of domestic / honor-related violence. Her husband had abused and raped her for 10 days and then sent her to his mother, who sent her to the streets the next day. She then sought help at the mosque who referred her to an informal shelter. The women's shelter did not want to receive her despite the demands of the municipality, because there was no direct threat from her husband at the time. She eventually received her residence permit as victim of domestic violence through the informal shelter.

For partners with a dependent residence permit who are victims of domestic violence, access to women's shelters is not self-evident, as shown above. Still, there are also many women's shelters that can help. Since these women had a residence permit before entering the shelter, they meet the criteria for admission and the shelter receives welfare for them too. Especially women's shelters in the big cities are very familiar with this target group.

In case of demonstrable domestic violence, a long-term residence permit can be obtained relatively easily. The condition is that domestic violence is reported to the police and a statement from a doctor or social assistant (for example from a women's shelter) is provided. Such applications are granted relatively often: 83% over the period 2013–2016.

B. PARTNERS WITHOUT A RESIDENCE PERMIT

Because of a quarrel between an irregular Guinean woman and her partner, the neighbors called the police. The case turned out to involve domestic violence. The police asked the woman for a statement. The statement was recorded, but the woman was then detained in order to expel her! Police have not referred her to a women's shelter. When the expulsion failed and the woman was set free, she had to seek shelter in the informal circuit.

For irregular migrants who stay with their legal partner, because they could not comply with the conditions for a residence permit, it is much more difficult to be admitted to women's shelters. According to national legislation, women's shelters have no obligation to accept irregular migrant women victims of domestic violence, although at the same time irregular women in women's shelters can be eligible for financial support as well. Some women's shelters have a limited number of beds available for irregular migrant women, and refuse access when they are full. Other shelters set a deadline: a maximum stay of 6 months, after which the woman has to leave, even if there is no follow-up. Still, others become stricter in the admission criterion 'threats of domestic violence' when it comes to irregular migrant women. There are even women's shelters that refuse shelter by referring to national legislation, even if the funding is safeguarded. The women's shelters need such measures, because it is very difficult to support irregular migrant women to become independent.

Irregular migrant women may apply for a residence permit as victims of domestic violence, but it is difficult to get a positive response. In addition to the normal conditions for this type of residence permit, an irregular woman must also prove that domestic violence will continue in the country of origin. Figures show that from this target group only about 1/3 of the applications for an independent residence permit are granted.

For women's shelters, it is difficult to support irregular women, because often regularization is not possible and there is no alternative. Staying forever in the women's shelter is not an option either. This dilemma leads to stricter criteria for admission of irregular women in the shelter.

C. REJECTED ASYLUM SEEKERS

At the local informal shelter for rejected asylum seekers, a Guinean woman arrives in distress. She had been sent out of the asylum seekers' center the day before, because her asylum procedure was over and she was no longer entitled to stay. She did not know what to do, asked passers-by and was eventually taken home by one of them. There she was abused.

A central Iraqi woman was 2 months pregnant with her first child, when she fled from her husband. She was married by a religious body three months before, afterwards she was dismissed from the asylum seekers' center because her asylum request was rejected. Her husband locked her up in his house from the start. He then went to work and returned in the evening. When he found out she was pregnant, he denied it was his child. He hit her several times and also hit her stomach. Finally, the woman fled. She found her way to an informal shelter. They informed the police. No women's shelter was approached, because it was known from experience they would refuse.

Rejected asylum seekers are not entitled to shelter anymore. However, municipalities can develop their own informal shelters, which some 35 municipalities in the Netherlands have indeed done. However, the beds available for rejected asylum seekers in these municipalities are insufficient. In addition, these municipalities usually do not want to accommodate people from outside their region, so that for rejected asylum seekers from certain regions no shelter is available at all. It is unclear how these people survive and to what extent they experience domestic violence.

Numbers

A. PARTNERS WITH A DEPENDENT RESIDENCE PERMIT

In 2016, approximately 7,000 migrants passed the integration test for family reunification, of which ¾ were women. They all got a dependent residence permit. This means that more than 5,000 women with a dependent permit entered the Netherlands that year. They are dependent on their partner for five years. That means that in total about 25,000 women are dependent on their partner for their right to residence.

From 2005-2007, dependent partners submitted 604 applications for continued residence due to domestic violence, 82% of these applications were granted. Of the 604 applications, 178 were from Moroccan women and 109 from Turkish women. In the years 2013-2015, dependent partners submitted 620 applications for continued residence due to domestic violence. Of these, 83% were granted.

B. PARTNERS WITHOUT A RESIDENCE PERMIT

The numbers of irregular women are not known, because they are not registered.

The WODC¹ estimates the number of irregular migrants in the Netherlands in 2013 at about 35,000, of which approximately 10,000 would be women. Of these undocumented migrants about half would have an asylum background, the rest had other reasons for coming to the Netherlands and staying. These include the irregular women who have lived with their partner.

C. REJECTED ASYLUM SEEKERS

Of the 30,000 asylum applications on which the Netherlands decided in 2016, more than 8,000 were rejected. On average, a quarter of the asylum seekers are women. This means that approximately 2,000 female asylum seekers have been rejected. Not all of these women go to the streets – women with children get shelter in a special family facility. Women without children, however, lose their right to shelter and end up on the streets.

Irregular women are extremely dependent and thus, run a high risk of abuse and domestic violence. Throughout the years 2013-2015, 100 irregular women requested a residence permit due to domestic violence. Of these, 30% were granted, which are less than 30 permits.

Expectations due to international legislation for victims of domestic violence

Both the Victims Directive and the Istanbul Convention apply to irregular victims of domestic violence.

The Istanbul Convention places an obligation on the Dutch government to provide assistance to all victims of domestic violence, without discrimination to residence status. Appropriate shelter must also be available. The Netherlands has acceded to the Istanbul Convention in 2016. There are no situations so far in which the Convention has been invoked when refusing shelter to women without a residence permit.

The European Victims Directive obligates the Netherlands to help victims (including victims of domestic violence) without discrimination to obtain residence status. Also, if special aftercare is necessary, such as shelter, the Victims Directive imposes an obligation to offer this shelter without discrimination to residence status. The Netherlands has implemented the Victims Directive. During the debates about the Victims Directive Implementation Act, questions were asked about access to women's shelters for irregular women. The ministry has promised research on options to anchor access to women's shelters for irregular women who are victims of domestic violence into legislation, and ensure funding. This research should

have been published before July 1st 2017, but this has not happened so far.

With legal anchoring, it will be expected that irregular women who are victims of domestic violence will find access to women's shelters more easily.

Conclusion

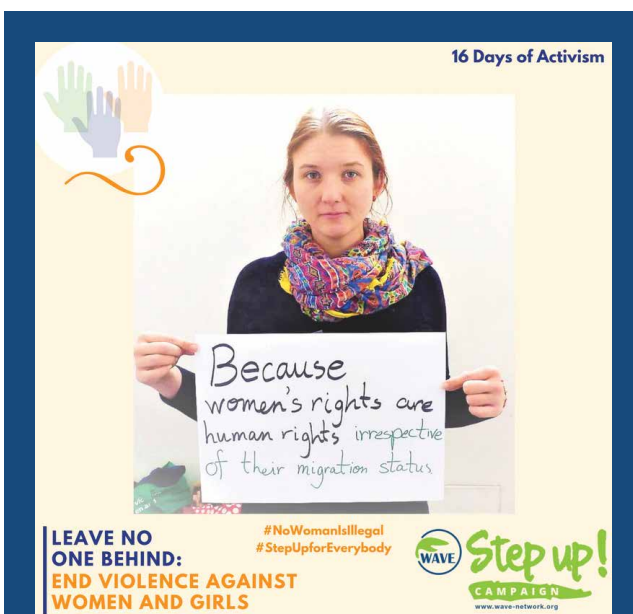
Practice shows that women without a residence permit are more vulnerable and at high risk of becoming victims of domestic violence. In the Netherlands, the law does not provide for shelter and protection of this group of women, although the Netherlands is obliged to do so under the Istanbul Convention and the Victims Directive. A rapid change in legislation is necessary, because only then can irregular women actually claim protection.

However, this is not enough. If irregular women have no option to survive independently, they will return to the same vulnerable situation after they have to leave the women's shelter, facing the same risks. For sustainable protection, it will be necessary to provide these women with an opportunity to survive independently. With a realistic prospect to get out of irregularity, it will also be easier for women's shelters to accept irregular migrant women.

¹ Research and Documentation Centre of the Ministry of Justice and Security, the Netherlands



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Because women's rights are human rights irrespective of their migration status! Lina Piskernik from the WAVE office sends her message of support.

Stronger Together

Sylvana Gafa, Women's Rights' Foundation/ Network Forum Malta/ Malta Police Force
Marceline Naudi, WAVE Board Member/ University of Malta/ Network Forum Malta
Alexia Rossi, Jesuit Refugee Service, Malta/University of Malta

Introduction

Several members of the Network Forum Malta, which is part of the WAVE network, are involved in a project working with women from domestic violence shelters and open centres for refugees and asylum seekers. The project is ongoing.

Stronger Together is a women's empowerment and advocacy project lead by the Jesuit Refugee Service (JRS) Malta in partnership with the Women's Rights Foundation (WRF) Malta and funded by the Commonwealth Foundation. The overall goal of the project is to enhance the quality of life of women living in institutional settings, such as open centres and domestic violence shelters. The project aims to:

- help women living in institutions feel more in control of their future and develop their confidence in their ability to influence their future.
- help women advocate for improvements in the policies and services that have an impact on their lives.
- improve the quality of life of women living in institutions.

What we did

The project took off in October 2015, and the first few months were spent setting up the project core team and discussing project parameters and activities. A number of civil society organisations and other professionals working in the field were contacted and invited to attend a training held in June 2016.

A total of 33 persons from 13 organisations (several of them Network Forum members) attended the training, including professionals from NGOs active in the migration field, in the running of shelters and the provision of services and advocacy for victims of domestic violence, refugees and asylum seekers. The aim of the training, entitled 'From Recipient of Aid to Right Holders', was to equip participants with better knowledge of empowerment and community mobilisation and discuss concrete ideas on how to develop effective and empowering services, particularly in transitional spaces such as domestic violence shelters and open centres.

At the same time, members of the project team arranged to visit various centres to meet with the residents to explain the project and recruit women participants. Ten potential participants were originally recruited, 5 from domestic violence and homeless shelters and 5 from open centres for migrants and asylum seekers.

In order to ensure that all the women recruited had a good understanding of the project aims and objectives before they made a commitment to form part of the working group, a first round of training was organized to explain the project better. This consisted of four sessions of 3-hours each, between July and August 2016, and focused on empowerment, human rights, advocacy and

communication. At the end of the training, 8 committed and motivated women agreed to participate; 6 from domestic violence/homeless shelters and 2 from open centres. Later in the project, the number of women dropped to 5.

The working group was formed and the women met regularly together with a member of the core team, working on team building and developing the terms of reference for this group: the aims of the group, what they felt the group was setting out to achieve and how they planned to achieve it.

By March 2017, existing members were offered further training covering basic research methods and group dynamics. The group dynamics sessions were practical in nature using exercises to work on together to more effectively understand the aids and obstacles to effective group functioning. The basic research methods included several meetings where different research tools were discussed. It was agreed that in order to reach out to other women in similar situations, to better understand the challenges they face living in institutional settings and their recommendations for change, qualitative research using focus groups for the data collection was most appropriate. The women were then guided to develop the questionnaire for these focus groups based on their own initial experiences.

Ethical clearance was obtained from the ethical committee of the University of Malta, through a member of the working group, to ensure that what was being planned would cause no harm and was considered ethically appropriate.

Once the research tool was developed, the working group began scheduling the focus groups with the various shelters and open centres. Permission to conduct the focus groups at the respective open centres/shelters was obtained via email. A formal email was sent to the heads of open centres/shelters with information about the project, requesting their permission to conduct on site focus groups with their residents. An initial visit was then conducted where all the women in the shelter were invited to participate, the project aims and use of data was explained and an information sheet was given out. At this meeting, a date and time for the focus group was given and residents wishing to participate were encouraged to be present at the shelter/centre at that time.

The women's own experiences in residential settings made them aware of the difficulties women face with childcare, leading them to consider the service of child-minding for the focus groups as very necessary. Another member also highlighted the issue of interpretation, especially for focus groups held in migrant open centres. Necessary arrangements were therefore made for child-minding and interpretation during the negotiations for the focus group sessions with the residential staff.

The groups were facilitated by two of the members of the working group, who were not residents of the specific shelter, together with a member of the project's core

→ team. The group facilitators, in the presence of a member of the project's core team, first explained the aims of the project, that the participants' anonymity will be respected and that they would be able to withdraw from participation at any point during the focus group, proceeding by obtaining a verbal consent from all participants before commencing with the focus groups.

Five focus groups were conducted in all establishments – 3 in shelters and 2 in open centres – each lasting about one hour, with the women who were willing to participate on the day residing there – irrespective of their age, as long as they are over 18 years. There were approximately 5 residents in each group and they discussed the major challenges and obstacles that they encounter while living in the residential settings. The facilitators guided the discussion using the pre-set guidance questions in the preferred language of the participants. In most cases however, both English and Maltese were used by the different facilitators because of the presence of foreign participants. In cases where the participants could speak neither English nor Maltese, cultural mediators (that are currently employed by JRS and are hence given the necessary training) were present for the focus groups and interpreted for the participants in Tigrinya, Arabic and Somali.

Whilst the questions were carefully worded so as not to cause harm in any way, it was still possible that some women might have got upset due to their situation. Taking into consideration that focus groups with the women residing in institutional settings may provoke deep emotions, the group facilitators were supervised by one of the project's core team members who was trained to respond in such situations and provided support as necessary. All participants were further provided with contacts for JRS and WRF, should they have had any further questions or needed further support as a result of their participation.

Participants in the focus groups were informed that the concerns raised and experiences shared through their participation will directly feed into advocacy work focused on improving the policies, structures and services that impact their lives and others like them living in residential settings. Part of the plan was that this will help combat disempowerment and helplessness and that the women participating will increase their sense of agency and control over their future.

What we have reached

Following the focus groups, the recordings were transcribed. The women in the working group are currently meeting to analyse the results and extract the main issues raised by the women in the focus groups. Indications thus far are: financial issues due to unemployment; inefficiencies in governmental departments, including housing and social security; court delays; physical conditions of one of the centres; and lack of support staff present in one of the centres.

Once all the main themes have been pulled out, a short report will be written by the working group with the support of the core team. The women will then go through a few sessions on how to best present this report, followed by a meeting with policy makers and major stakeholders for them to actually present and discuss the issues. A longer report will then be written and published online and disseminated to all stakeholders.

Conclusion

This has been a very interesting project and although some of the women in the working group had to drop out due to changes in their personal situations over the course of the project, we believe that they all generally benefitted from the experience. It was also empowering for the women in the focus groups to see the working group women carrying out this research themselves rather than academic researchers. We look forward to the working group members presenting their findings and resulting changes in policies to improve the lives of women in shelters and open centres.

We would like to thank all the women's domestic violence shelters/hostels and open centres that cooperated with us to enable this project to happen.



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Trafficked women and girls among asylum seekers in Austria

Jimmy Perumadan and Almut Bachinger¹

International Centre for Migration Policy Development, Austria

Introduction

The vulnerable situation of trafficked women and girls seeking asylum is widely recognized. Consequently, women and girls affected by trafficking are entitled to special procedural guarantees² and special reception conditions³ during their asylum proceedings. In order to guarantee those rights, EU Member States have a positive human rights obligation to identify potentially trafficked women and girls among asylum seekers in a timely and effective manner.

Despite the decreasing number of asylum applications since 2016 in Austria, the number of female applicants for international protection⁴ has increased. In 2015, the share of female asylum applicants was 28%, whereas for the time period January-August 2017 it increased to 39%.⁵

There are various ways in which asylum-seeking women and girls may be trafficked. The woman or girl may seek employment in order to pay back debt or to finance the journey onward and may find herself trapped in trafficking situations. This can happen either en route or at the final destination.⁶ The person may also find work opportunities with the smugglers who then become the perpetrators of trafficking.⁷ Smuggling and trafficking networks often overlap.⁸ Another scenario is that the woman or girl has submitted an application for international protection and subsequently finds herself in a trafficking situation.⁹ Certainly, there are cases of persons who first get into trafficking situations and afterwards look for international protection. The trafficked person is told by the traffickers to apply for asylum in order to avoid deportation for the time of the asylum procedure.¹⁰ In the second scenario, the person applies for asylum after escaping from the traffickers, in order to avoid being sent back to the country of origin where the person may be subjected to re-trafficking or reprisal.¹¹ There are different purposes of trafficking in human beings, such as sexual exploitation, labour exploitation, organ removal, begging, or criminal activities.

The legal framework

The positive obligations of states to protect persons affected by trafficking are laid down in specific legal instruments for anti-trafficking. The primary legal instruments at the European level are the Convention on Action against Trafficking in Human Beings (2005) by the Council of Europe and the Trafficking Directive (2011) by the European Parliament and the Council of the European Union. Both instruments require states to provide victims with immediate access to legal representation, legal counsel

and access to witness protection programs, based on individual risk assessments.¹²

The legal framework on international protection contains specific provisions for 'vulnerable persons'¹³ which are, inter alia, set out in the Reception Condition Directive of the EU.¹⁴ This definition of vulnerable persons includes persons affected by trafficking as well. Accordingly, Member States have the obligation to assess, identify and address the special needs of those vulnerable persons in a timely manner.¹⁵ Furthermore, victims of violence shall be provided with access to appropriate medical and psychological treatment or care.¹⁶ The identification of trafficked women and girls who are seeking asylum is a prerequisite for their access to support services because they are often not aware of their rights.

Apart from the special needs that trafficked persons have, there is another reason why the formal identification as a 'victim of trafficking' is of great relevance for the individual. In theory, some trafficked persons may qualify for refugee status or subsidiary protection status on grounds related to their trafficking experience. This would be the case, for example, if the woman or girl may be subject to repercussions by the perpetrators upon return, which would amount to persecution for a reason mentioned in the 1951 Refugee Convention against which no effective protection by national authorities in the country of return is available. One of the reasons can be the membership to a particular social group.¹⁷ However, in practice, only very few persons have received international protection on grounds related to their status as victims of trafficking. On the one hand, officials working in asylum determination procedures are sometimes not sufficiently trained to identify potential cases of trafficking as shown by studies among EU Member States.¹⁸ Moreover, some officials are uncertain whether rights violations related to human trafficking may qualify for international protection.¹⁹ On the other hand, applicants for international protection on the grounds of trafficking face difficulties in enforcing their claims. In general, claims are often rejected with the reasoning that individual persecution²⁰ is lacking, or the person is not found to be a member of a particular social group according to the 1951 Refugee Convention. Furthermore, it is justified that in case of persecution the applicants have access to protection by national authorities in the country of origin or return.²¹ However, it has been recognised that serious human rights violations inherent to trafficking such as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, and the deprivation of medical treatment may amount to persecution.²² The GRETA report of 2016 states that "Risks faced on return to a coun-

try of origin, or a third country (of transit, for example), including risks of re-trafficking, are also recognised as potentially giving rise to a claim to asylum.”²³ Furthermore, the trafficked person may face “ostracism, discrimination or punishment by the family, the local community or, in some instances, by the authorities upon return.”²⁴ When it comes to minors, child trafficking is recognised by UNHCR as a form of persecution.²⁵ This does not imply that all trafficked persons qualify for international protection but some trafficked persons are at risk of serious harm after return according to the 1951 Refugee Convention and thus, require a case-by-case assessment.

The situation in Austria

In Austria, there is no statistical data available on the number of asylum applications or decisions that are linked to human trafficking.²⁶ However, when taking into account the estimates and experiences of relevant actors and studies in other EU Member States, it can be assumed that the number of trafficked persons among asylum seekers in Austria is of quantitative relevance.²⁷

A review of Austrian case law conducted by IOM and EMN in 2014²⁸ identified for the time period of July 2008 – December 2013 a total number of 129 decisions of the Asylum Court²⁹ that were explicitly linked to trafficking as a ground for granting international protection. Only in seven cases asylum was granted, and in three cases, the applicants were granted subsidiary protection. Out of the seven cases that received refugee status, the Court concluded in five cases that the applicants fall under the definition of membership of a particular social group (due to their trafficking experience) according to the 1951 Refugee Convention. In the case of an Albanian woman, the Court held that the applicant, who had testified against the traffickers, may face assault upon return and viewed the Albanian authorities as not being able to protect her. The majority of applications were submitted by persons from Nigeria (41 cases). The Asylum Court has repeatedly justified that the Nigerian authorities are able and willing to protect returnees from traffickers. Only one case of an applicant from Nigeria was granted refugee status during this time period.³⁰

According to IOM and EMN, the Austrian asylum system has been criticised for the lack of an effective mechanism for the identification of ‘vulnerable persons’ among asylum seekers, apart from the identification of unaccompanied minors. Moreover, there is no centralised formal identification of persons affected by trafficking as such, that is “defined as a decision by a competent authority which is binding for other authorities.”³¹ However, if an authority has the suspicion that an asylum seeker may be affected by trafficking, a special unit of the federal criminal police office is contacted. If the suspicion is confirmed by the specialised unit, criminal investigations are initiated and the presumed trafficked person has access to support services provided by a specialised NGO.³² Hence, this identification is relevant only in regards to criminal proceedings but is not binding for authorities such as the asylum authorities.³³

In Austria the main actors providing support services for women and girls affected by trafficking are the spe-

cialised NGO Intervention Centre for Trafficked Women (LEFÖ-IBF) and the Drehscheibe, a facility of the youth welfare office of the City of Vienna.³⁴ LEFÖ-IBF is the only NGO that is tasked by the Federal Ministry of the Interior and the Federal Ministry of Health and Women’s Affairs to provide support to women affected by trafficking in Austria.³⁵ It offers psychosocial counselling, legal support during court proceedings, an emergency shelter and return assistance to migrant woman and girls.³⁶ All migrant women and girls having (potentially) experienced trafficking have free access to services provided by LEFÖ-IBF and this is not bound to any formal identification by public authorities.

The youth welfare office, which is operated on a federal state level, is responsible for providing assistance to minors affected by trafficking. In Vienna, the Drehscheibe, a socio-pedagogic centre, is specialised in assisting unaccompanied foreign minors and minors affected by trafficking. It provides accommodation, food and cooperates with LEFÖ-IBF, which provides legal assistance. The other federal states do not have specialised centres for trafficked minors but the general youth welfare centres take care of such cases.³⁷ LEFÖ-IBF and the Drehscheibe are both located in Vienna. A gap in protection and support of trafficked persons in the other federal states of Austria has been reported.³⁸

LEFÖ-IBF plays an important role in the anti-trafficking landscape in Austria. It has contributed to the improvement of the identification of trafficked women and girls through the training of law enforcement actors, asylum officials, judges, as well as its active membership in the Task Force on Combating Human Trafficking.³⁹ Good cooperation has been established between LEFÖ-IBF and other actors such as law enforcement and municipal authorities in Vienna, and in some cases with the offices of public prosecutors. However, it is important to note that this cooperation cannot replace a formal identification mechanism within the Austrian asylum system.⁴⁰

1 Proofread by Christine Donovan Ball.

2 Procedural guarantees ensure certain rights during legal procedures. A special procedural guarantee is, for example, the right to legal support during the asylum procedure, the right to be interviewed by an official of the same sex, etc.

3 Asylum seekers waiting for the decision on their asylum application have the right to certain reception conditions, such as access to housing, food, clothing, health care, education for minors and access to the labour market under certain conditions. Some asylum-seekers have special reception needs such as psychological treatment. See https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/reception-conditions_en [accessed on 17.09.2017]

4 International protection refers to asylum (= refugee status) and subsidiary protection.

5 Federal Ministry of the Interior: Asylstatistik 2015 and 2017. Online available at: <http://www.bmi.gv.at/301/Statistiken/> [accessed on 19.09.2017]

6 Anna Triandafyllidou and Thanos Maroukis (2012): *Migrant Smuggling: Irregular migration from Asia and Africa to Europe*. Palgrave Macmillan, p. 191-192.

7 *ibid.*

8 International Organization for Migration (IOM) and European Migration Network (EMN, 2014): *Trafficked persons as asylum seekers: The process of identification and access to residence rights in Austria*, p. 33. Online available at: http://www.emn.at/wp-content/uploads/2017/01/Trafficked-persons-as-asylum-seekers_Austria_Final.pdf [accessed on 17.09.2017]

9 It is important to note that in general international protection is granted for situations experienced in the country of origin (IOM and EMN 2014:33).



- 10 Ibid. IOM and EMN (2014: 33).
- 11 Ibid. IOM and EMN (2014: 33).
- 12 Matilde Ventrella (2017): Identifying Victims of Human Trafficking at Hotspots by Focusing on People Smuggled to Europe. *Social Inclusion* 5 (2): 69–80.
- 13 Persons are not vulnerable as such, but can be in vulnerable situations.
- 14 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. Online available at: <http://data.europa.eu/eli/dir/2013/33/oj> [accessed on 17.09.2017].
- 15 Art 21 and Art 22 Reception Condition Directive, Directive 2013/33/EU.
- 16 Art 25 Reception Condition Directive, Directive 2013/33/EU.
- 17 Membership of a particular social group is one of the five grounds for persecution according to the 1951 Refugee Convention. It is a group of persons who share a common characteristic other than their risk of being persecuted. For example, women, tribes, occupational groups and homosexuals are widely recognized as members of a particular social group.
- 18 In Austria, the need for training of officials within the asylum authorities in the identification of persons affected by trafficking has been recognised and is being addressed (IOM and EMN (2014: 24); IOM projects "IBEMA" and "ASYL-Train" see more at <http://www.iomvienna.at/de/asyl-train>).
- 19 ICAT, Inter-Agency Coordination Group against Trafficking in Persons (2016): Issue Paper: Providing Effective Remedies for Victims of Trafficking in Persons. UNODC. Online available at: <http://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html> [accessed on 17.09.2017].
- 20 Individual persecution in the country of origin/ return is an essential element of the definition of a refugee and thus, is a prerequisite for being granted refugee status.
- 21 ICAT (2016).
- 22 Ibid.
- 23 GRETA, Group of Experts on Action against Trafficking in Human Beings (2016): 5th General report on GRETA'S activities. Council of Europe, p. 40. Online available at: <https://rm.coe.int/168063093c> [accessed on 17.09.2017].
- 24 IOM and EMN (2014: 35).
- 25 Jason M. Pobjoy (2017): *The Child in International Refugee Law*. Cambridge University Press. Cambridge, p. 25.
- 26 GRETA (2016: 41). The statistics of the Federal Ministry of the Interior publishes the number of decisions on humanitarian residence (§57 AsylG 2005), which is granted, inter alia, to trafficked persons. However, there is no specific statistic available on asylum (§3 AsylG 2005) nor on subsidiary protection (§8 AsylG 2005) specifically granted on grounds related to trafficking.
- 27 IOM and EMN (2014: 20).
- 28 IOM and EMN (2014: 37– 41).
- 29 The Asylum Court was responsible for appeals against decisions of the body of first instance, the Federal Asylum Office. Due to a reform of the Austrian system of administrative jurisdiction in January 2014 the Federal Administrative Court is responsible for appeals against the first instance decisions.
- 30 IOM and EMN (2014: 40).
- 31 IOM and EMN (2014: 28).
- 32 AIDA (Asylum Information Database, 2016): Country Report: Austria. European Council of Refugees and Exiles, p. 50. Online available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_at_2016update.pdf [accessed on 17.09.2017].
- 33 IOM and EMN (2014: 28).
- 34 Besides these facilities there are some other NGO's active in the field of anti-trafficking such as Caritas, Diakonie, ECPAT, EXIT, Herzwirk and SOLWODI (GRETA Report 2016: 10).
- 35 LEFÖ-IBF (2017: 5): Tätigkeitsbericht 2016. Online available at: http://www.lefoe.at/tl_files/lefoe/IBF_Tätigkeitsbericht_2016.pdf [accessed on 19.09.2017]
- 36 <http://www.lefoe.at/index.php/IBF.html#Offering> [assessed on 18.09.2017]
- 37 GRETA (2015): Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria. Second Evaluation Round, p. 29. Online available at: <https://rm.coe.int/1680630cb4> [accessed on 20.09.2017]
- 38 IOM and EMN (2014: 32).
- 39 The Task Force on Combating Human Trafficking is a co-ordination platform with the aim to coordinate and intensify anti-trafficking measures in Austria. It brings together all relevant ministries, government bodies, the federal provinces, the social partners and specialized NGOs.
- 40 GRETA (2015: 25).



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The Official 16 Days of Activism Against Gender Violence Campaign has also kicked off in Moldova at the Asociația Impotriva Violentei "Casa Marioarei"!

Trafficking and Vulnerability

Rachel Mullan-Feroze

Service Manager, Ashiana Sheffield

Women are not vulnerable simply because they are women, nor do the women we support in our trafficking provision lack the capacity or the intelligence to make life choices. Many of these women come from societies that do not recognise their equality or view them as “lesser” human beings and they have been made vulnerable due to circumstances over which they have no control.

Women from Northern Albania are a pertinent example as Albanian women form our largest single group of trafficked women. In the North of Albania, there is a societal system known as the Kanun of Lek which explicitly views women as inferior to men and which circumscribes their opportunities to work, or to access social activities. The Kanun is based on the harmful practices of forced marriage, blood feuds and ‘honour’ related abuse; many women become vulnerable to trafficking in an attempt to escape these practices.

Other women may become vulnerable due to, for example, their sexuality in societies in which LGBT people are criminalised, or because they wish to escape ‘cultural’ practices including female genital mutilation. Women who seek to escape may become isolated from family and community and become ‘targeted’ by those who wish to gain through the exploitation of others.

Women become vulnerable to being trafficked for a variety of reasons, but what is very clear is that perpetrators seek to gain complete control over a woman in order to achieve reward, usually financial. This control may be physical, but there will always be an element of psychological control which can make it extremely difficult for a woman to leave an exploitative situation.

All victims of trafficking experience forms of coercion and control, but the situation for many women is further compounded by her role as primary carer for children or older relatives. Threats to family members in the country of origin can play a huge role in allowing a perpetrator to retain control over a woman. Equally, using the threat of deportation or imprisonment on women with un-regularised immigration status is used to keep the women compliant and hidden from law enforcement or support agencies.

Our role as support workers and the role of the UK in identifying and supporting victims of trafficking should therefore be to give back control and agency to women who have had it stripped from them. I believe that many of the processes and working practices do not do this, rather they can serve to remove control and further harm the women who should be supported to recover from the trauma of trafficking.

There is currently no formal regulation of frontline agencies that support victims of trafficking, and some organisations appear to have a very paternalistic approach to trafficked women. The ethos of these agencies can appear to be that of ‘saving’ and ‘rescuing’, and the women’s movements are curtailed or subjected to scrutiny. This infantilising approach may only serve to reinforce a woman’s sense that she is ‘allowed’ herself to be trafficked and thus complicit in her exploitation. This can therefore further damage self-belief and self-efficacy. In this manner, we compound a woman’s vulnerability to re-victimisation.

Equally, the processes that underpin the National Referral Mechanism (NRM) – its purpose is to identify victims of trafficking and refer them to support – can also further harm women who ‘consent’ to a referral.

The NRM is problematic for several reasons, not least of which is the problem of achieving the informed consent of a woman who has experienced significant trauma. Obviously, information is required in order for a decision-maker to make an ‘I suspect but cannot prove’ decision that someone may be a potential victim of trafficking (PVOT); however, if distressing information is taken from a woman outside a relationship of some trust, it can be re-traumatising.

Once a woman has been recognised as a potential victim of trafficking, she is given rights and entitlements in the UK, irrespective of her immigration status. One of these rights is access to free legal and immigration advice. The fact that this can only be accessed once the woman has been identified as a PVOT is of concern. Entry into the NRM process means a woman will come to the attention of the Home Office and therefore, there may be implications for her future status and ability to remain in the UK. Pre-NRM immigration advice would allow a woman to decide on an NRM referral in full awareness of the implications as well as access to support and entitlements.

Following her period of support in the NRM, if a woman is conclusively recognised as a victim of trafficking, there is currently no mandatory grant of leave to remain in the UK. A twelve-month period of discretionary leave can be awarded, but is dependent on other factors.

Further, there is currently no Home Office funded post-NRM support which means the provision of resettlement or ongoing support is patchy. Many women will have complex and enduring needs that require the consistent support from workers they know and trust. This is not about creating relationships of dependency between the woman and her worker, but about acknowledging the need to do no further harm or to re-traumatise.

→



Participants gathering at the WAVE annual conference 2017 in Budapest, Hungary. The theme of the event was: *From backlash to effective response: step up together for the protection of women and girls from all forms of violence.*

→ Finally, there is no right of appeal attached to an NRM decision. Currently, the percentage of positive decisions is around 35%, which, in my experience, does not reflect the reality of women's experiences. A negative decision can compound a woman's feelings of guilt, and support the perceived power of the perpetrator who told her that if she disclosed her exploitation, no one would believe her.

If we are to avoid doing further harm to women who have been trafficked, we need to understand those issues that made them vulnerable to exploitation. We need to support them to take back control, to recover, and to develop self-determination. Most importantly we need to ensure that our models of support, and those processes which are contrived to protect and provide that support, do no further harm to women that are already vulnerable and traumatised.

Rachel Mullan-Feroze is Service Manager at Ashiana Sheffield. She has been working in the area of domestic and sexual violence for over 25 years and currently manages Ashiana's anti-trafficking projects. Ashiana Sheffield is a specialist organisation that supports BAMER women and children affected by violence and abuse, including forced marriage, 'honour-related' abuse, FGM and Human Trafficking.

Undocumented women in Cologne – Support and Obstacles

Behshid Najafi and Hannah Fahtima Farhan

agisra

Agisra is an information and counselling center for migrant and refugee women. The abbreviation *agisra* stands for “Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung” (Association against International Sexual and Racial Exploitation).

Agisra started its work in Cologne in 1993, where jobs were solely financed as work-related measures. This small organization developed into not only a professional counseling service but also an important political player concerning the issues of women and migration. 13 qualified professionals, all women and predominantly with personal experience of migration, work at *agisra*. The *agisra* team speaks a total of 15 languages.

Agisra sees social work as a human rights profession. Our advice, support and therapy are provided regardless of the victim's social and ethnic background, religion, age, sexual orientation, language skills and residency status. We take a solution- and resource-oriented, anti-racist, feminist, transcultural and intersectional approach. *Agisra* supports female migrants in abusive relationships, confronted with sexism (oppression on the basis of gender), racism (oppression on the basis of race, origin, religion, language etc.) and other types of oppression. The support we provide is solution-orientated and is intended to allow the women to organize their lives independently. The work is geared towards the best interests of these women.

Aside from counseling and accompanying women to meetings and appointments, we engage in informational and educational work concerning the topics of women and migration. We also take part in different focus groups, round tables and networks on a municipal, state and federal level on subjects such as violence against women and girls, racism and discrimination. Our political lobby work also extends on a European and international level; *agisra* is a board member of PICUM (*Platform for International Cooperation on Undocumented Migrants*).

Women's Migration

Women's migration is an umbrella term for a very complex phenomenon. The reasons and personal decisions of women for leaving their country are just as varied as the migration conditions and the situations in the countries to which they move. Women migrate voluntarily, involuntarily, or due to emergency situations. They are, however, exposed to potentially precarious and dangerous conditions, in which they can easily be exploited.¹

Women migrate for economic, social, societal, political, family-related and/or personal reasons. They play an

increasingly important role in worldwide mobility. Thus, people have begun to discuss a feminization of migration.²

Human Rights Violations against Women

Many people, women as well as men, flee their countries because of human rights violations, famine, poverty, lack of medical care, lack of education, war and internal conflict, religious and political persecution, consequences of climate change, etc. Women however, are exposed to additional specific human rights violations, because of strict and widespread patriarchal norms, i.e. norms that almost exclusively apply to women and violate their right to self-determination over their body and sexuality, such as forced virginity, forced abortion, forced sterilization, 'sut-tee' or 'sati' (burning of widows), forced marriage, forced prostitution, rape, dress codes such as forced veiling and unveiling, female genital mutilation (FGM), stoning, etc.

Undocumented migrant women in Germany

Women who have migrated or fled to Germany often find themselves in new situations. Most importantly women seek security of their rights and prospects for the right to remain. The laws on residency and asylum have been made stricter in recent years, for example, the period of time for which one must remain married to their partner in order to set up an independent residence right (in German *Ehebestandszeit*) has been raised from two years to three.³ These restrictive laws have led to an increase in the risk of becoming undocumented for women.

This means that undocumented migrant women do not appear out of nowhere! For example, migrant women's residency is at risk under the following circumstances:

- when their tourist visa expires
- when their studies are interrupted prematurely or they could not find a job 18 months after their graduation
- when they separate from their spouse before the three years of “*Ehebestandszeit*” end
- when the application for asylum is dismissed, and they cannot return to their country of origin or
- when they are facing violence from their employer and leave their job as “*Au-Pair*” etc.

→

→ *Agisra* has supported undocumented migrant and refugee women since its establishment. Between 2005–2006, the foreign authorities of Cologne filed a report against *agisra* for supporting a 16-year-old girl without papers. This charge was dropped. The law that criminalized humanitarian support for people without papers was abolished in 2011. Since then, *agisra* and other refugee organizations in Cologne have received funding to specifically support these persons and women without papers.

We assist undocumented women in gaining access to health care, women's shelters and schools for their children, and we support them during the processes of applying for residency and asylum.

There are individual support organizations in Cologne as well as nationwide offering medical care to women without papers, e.g. *Medinetz* in different German cities such as Bonn or Essen,⁴ *Malteser Migranten Medizin* in Cologne, Münster or Duisburg⁵ and various individual doctors. Access to women's shelters for undocumented women is almost nonexistent. Most of the women's shelters in and around Cologne do not have sufficient capacity or do not accept women without papers.

In any case, we have witnessed our work for undocumented women being made harder in recent years by the developments in residency and asylum laws. The authorities of Cologne are increasingly ruling against our clients.

Conclusion and Outlook

Human rights are universal and inalienable! Germany, as one of the richest countries in the world, as a democracy and a welfare state, is committed to these human rights standards for all, including undocumented people.

One of these human rights is formalized in the *Istanbul Convention (European Council Convention on preventing and combating violence against women and domestic violence)*. This convention provides access to protection for all women facing all forms of violence regardless of their residency status. This also explicitly includes undocumented women.

Agisra faces many obstacles supporting undocumented women in Germany due to restricted legal regulations. The *Istanbul Convention* is already ratified by many states.

We demand that the German government ratifies the *Istanbul Convention* in full and recognizes and protects the human rights of all women in Germany.

1 Najafi, Behshid, 'Current situation and problem description', in: Trafficking in women in Germany, KOK - German Network and Coordination Office Against Trafficking in Human Beings, Berlin, 2008, pp. 24-32.

2 E.g.: Donato, Katharine M., Gabaccia, Donna, The Global Feminization of Migration: Past, Present, and Future, June 1 2016, [www.migrationpolicy.org](https://www.migrationpolicy.org/article/global-feminization-migration-past-present-and-future), <http://www.migrationpolicy.org/article/global-feminization-migration-past-present-and-future>.

3 Germany's right of residence, Section 31 S.1 No. 1 Independent right of residence of spouses. Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0499. Before July 1, 2011 one could apply for an independent residence right after two years of marriage.

4 www.medinetzbonn.de oder www.medinetz-essen.de

5 The *Malteser Migranten Medizin* by the Malteser, humanitarian relief agency of the Sovereign Order of Malta, provide health care services in 18 German cities for undocumented migrants, <https://www.malteser.de/menschen-ohne-krankenversicherung.html>




Hannah Farhan-Dorn received a Master's Degree in Cultural Studies in Hamburg, Dalian (PR China) and Muenster. She is currently enrolled in the Master's Programme "Non-profit Management and Governance" at the University of Muenster. She works as an advisor on the topic of Refugee Politics and

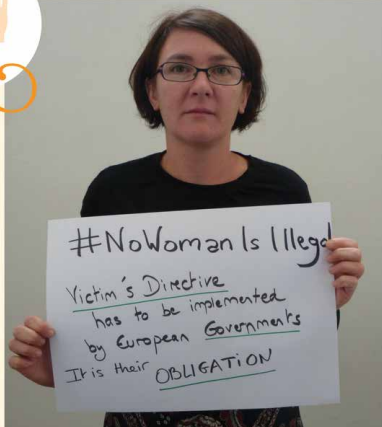
Gender Equality in the Federal State of North Rhine Westphalia. She has been working for *agisra* e.V. since 2014, among other as project advisor at *DaMigra* e.V., an umbrella organization for migrant women's organizations, initiated and formerly run by *agisra*.



Behshid Najafi, born in Iran in 1956, holds a Bachelor's Degree in Political Science and a Master's Degree in Pedagogy. Najafi campaigned for freedom and equality in Iran. Due to her political engagement, she had to leave Iran in 1986 and has been living in Germany ever since, where she has been

actively engaged in the fight against discrimination and supported the human rights of female migrants and refugees. Najafi is the Executive Director of *agisra* e.V., an information and counselling centre for female migrants and refugees in Cologne, where she has worked since 1993. She is counsellor and frequently holds workshops and seminars, writes and presents on topics related to women, migration and human rights, including racism, sexism, violence against women, forced marriage, and trafficking of women and girls. *Agisra* e.V. is since 2001 a member of PICUM and since 2016 Behshid is a PICUM board member.



16 Days of Activism



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Step up!
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Victim's Directive has to be implemented by European Governments. It's their obligation! Thank you to Sophie Jouan from Otro Tiempo Association in Spain for her support.

Migrant and refugee women in Serbia

Dijana Malbasa

Autonomous Women's Center (AWC)

Ability of Serbian legislation and policy system to provide international protection and respond to the needs of refugees and migrant women victims of violence

The closing of the Balkan route and the Hungarian border barrier have resulted into legislative and policy obstacles for people seeking asylum in Hungary; and also into hundreds of cases of collective deportations of migrants and refugees from Croatia and Hungary to Serbia in the past year; into brutality and violent treatment by the border police of these two countries¹; and have had an impact on increasing the length of stay of refugees and migrants in Serbia.

Currently, there are around 4,200² refugees and migrants in Serbia. The vast majority of them are accommodated in some of the 18 asylum or transit centers in Serbia, where they spend several months or more than a year mostly awaiting their turn to cross the Hungarian border and proceed to some other European countries. Around 17% of them³ are women who usually (in more than 90% of the cases⁴) travel with their partners, children or other members of the family.

Since Serbia is up to now mostly perceived as a transit country and is mainly focused on providing humanitarian assistance, there are still many weaknesses within the immigration and asylum system in terms of identification and providing support and protection to the most vulnerable groups of refugee women, especially victims of gender-based violence (GBV).

Implementation of a gender dimension into the asylum system, providing international protection to victims of GBV

Laws and regulations in the asylum system do not provide precise procedural guarantees in the process of reception, accommodation and do not grant international protection when it comes to women and victims of GBV. In principle, special care for different groups of vulnerable persons and gender equality are only guaranteed. Furthermore, Serbian Law on Asylum does not explicitly recognize GBV as a ground for granting international protection, nor does it contain precise procedural guarantees for refugee women and victims of GBV in the asylum process.

Since the Law on Asylum became effective in 2008, around 620,000⁵ people have been registered as persons who en-

tered Serbia and have sought to seek asylum, although many fewer have formally submitted a request to seek asylum to a competent body (e.g. in the first half of 2017, only 151 refugees and migrants applied for asylum out of the 3, 251⁶ who expressed the intention to seek asylum). Between 2008 and August 2017, Serbia has granted international protection only to 91 persons, 27 of these were granted to women and 8 to girls.

In 2016, on the basis of the Access to Information of Public Importance Act from Serbia, we have been informed that the Office for Asylum did not possess information about persons who have received international protection on grounds of exposure to GBV or who applied for asylum on that account.⁷ However, there is at least one international protection granted on the grounds of exposure to GBV. It is granted to women who left Cameroon because of the risk of abuse and death resulting from their refusal to enter into a forced marriage.⁸

In several cases, the applications were rejected because the applicants had left the country before the procedure ended, or on the grounds of them coming from a "safe third country". However, when the asylum application is considered for such reasons, it is very important to have a suitable immigration framework which includes gender-sensitive asylum procedures and support services, as well as competent and trained officials who are able to recognize vulnerable persons and victims of GBV.

Protection from domestic violence for refugee and migrant women

Whether or not refugee women will apply for asylum in Serbia or will do it in another EU country, one of the main challenges is also their safety in asylum or transit centers.

During the massive influx of refugees in Serbia in 2015, when as much as 8,000 people were entering Serbia daily and stayed there for a few days or even a few hours, it was somewhat understandable that there were problems in identifying GBV victims and providing adequate protection. At that time, none of the competent bodies recorded cases of GBV. The reason stated was the fact that refugees remained in Serbia for a very brief period of time, hence not long enough for these cases to be identified and adequately dealt with⁹.

However, since the Balkan route was closed and refugees remained in Serbia for longer periods of time, the system has not been significantly improved regarding victims of GBV and refugee women. There is still a lack of common practice and instructions for proceedings in situations of →

→ GBV in the context of migration. Also, there is a lack of services for GBV victims accessible to refugee women; a national helpline for victims of domestic violence has not yet been set up; safe houses/shelters are not accessible and if present, they are facing shortages. Moreover, legal and psychological aid depend exclusively on the capacity of NGOs who have access to asylum and transit centers.

Lately, almost all of the refugee shelters in Serbia have registered cases of domestic violence against refugee women, but the lack of clear instructions leads to different practices being applied in such situations. Some of the examples of good practices presented to AWC during the field visits to asylum centers in Sjenica and Tutin in August 2017 was the coordinated action of asylum center officials in Tutin and Sjenica and NGOs, when victims of domestic violence have been timely protected and relocated to a safe environment, and the safe house which is run by one of the feminist NGOs.

However, it is very difficult to get an insight into the overall situation concerning the protection of refugee women against domestic violence, since a comparable and comprehensive database of domestic violence cases at the national level has not been established. It is unknown how many cases of domestic violence amongst migrants have been registered, whether any criminal or civil proceedings have been initiated and whether any protective measures have been issued. That will hopefully change once the new Law on Prevention of Domestic Violence is systematically and effectively implemented.

Need for change within the system

Although refugees as well as officials continue to perceive Serbia as a transit country, it is clear that Serbian authorities need to find a new approach to handle GBV cases arising from the refugee crisis. Besides providing humanitarian assistance and ensuring safe passage to the desired destination, existing structures have to be further developed in order to set up an efficient asylum system that recognizes and responds to the needs of refugee women and victims of GBV and systematically implements a gender dimension into all asylum procedures, from entry point registration and reception to integration into Serbian society.

Hopefully, the draft of the new Law on Asylum and Temporary Protection introduced by the Serbian Ministry of Interior will bring some positive changes. Amendments to the draft submitted by the Autonomous Women's Centre on introducing a gender dimension into asylum procedures and aligning existing provisions with standards from the Istanbul Convention have been mostly accepted by the Ministry. The adopted amendments provide additional procedural guarantees for women victims of GBV during the asylum procedure and explicitly recognize GBV as a form of persecution on the basis of which international protection can be provided.

Progress in the protection and recognition of the needs of victims of GBV is also expected with the adoption of the new Law on Prevention of Domestic Violence. This introduces emergency measures for removing the perpetrator from the home and temporarily banning any contact

with the victim and even approaching the victim. The new amendments to the Criminal code introduce several criminal offenses, including stalking, female genital mutilation, and forced marriage. The announced changes to the Law on Foreigners will bring some guarantees for women victims of GBV, such as the possibility of granting independent stay to said victims.

- 1 <https://hcrit.rs/forcible-irregular-returns-to-the-republic-of-serbia-from-neighbouring-countries/>
- 2 <http://reliefweb.int/report/serbia/unhcr-serbia-update-21-27-august-2017>
- 3 <https://data2.unhcr.org/en/documents/download/55034>
- 4 <http://www.bgcentar.org.rs/bgcentar/eng-lat/publikacije/posebna-izdanja/rodna-analiza-zakona-o-azilu/>
- 5 <http://azil.rs/en/wp-content/uploads/2017/07/Right-to-Asylum-Periodic-report-April-June-2017.pdf>
- 6 Ibid
- 7 <http://www.astra.rs/wp-content/uploads/2017/04/Migrants-with-irregular-status-in-Serbia.pdf>
- 8 <http://www.bgcentar.org.rs/bgcentar/eng-lat/publikacije/posebna-izdanja/rodna-analiza-zakona-o-azilu/>
- 9 <http://www.astra.rs/wp-content/uploads/2017/04/Migrants-with-irregular-status-in-Serbia.pdf>



Dijana Malbasa received her Bachelor's and Master's Degree from the University of Novi Sad, Faculty of Law. She has a certificate for mediators in a specialized mediation model for cases related to discrimination. She works as a lawyer at the Autonomous Women's Centre since 2015, where she provides legal aid

to women survivors of domestic violence and conducts policy analysis related to gender based violence in the context of migration. Her working experience includes providing free legal aid to Roma people, internally displaced persons, women in prostitution and providing education on discrimination and asylum related issues.

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Mojca Dolinar from Association for nonviolent communication, Katja Matko from Association SOS Help-line, and Urška Živkovič from Slovenska filantropija in Slovenia.

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ANIS 88, GRAFFITI ARTIST – C H I L E

Jocelyn « Anis » Aracena is a 28-year-old female street artist from Chile, who has been painting since the age of 12 on the street, a space traditionally dominated by men.

Streetart works

Anis' works are inspired from the life experience one can gain on the street, and also from the questions linked with the feminine body in dialogue with the urban landscape and feminist criticism.

Her work is an illustration of what she is fighting for, most of all gender equality, protection of nature, and woman as a factor in combating machismo. These themes are recurrent in her murals. Anis dedicates herself to make people aware of what is happening in Chile as well as in all South America as far as women are concerned, machismo and an increasing number of femicides among other things. Anis' murals tackle these themes but always with a positive vision, as we can see in several murals, the « Resistencia » mural she painted in Valparaiso, the "Utero" mural she created for the Second Art Biennale in Paraguay and the « Gender equality » mural she painted in Santiago.

Social commitment

Anis is co-founder of the biggest movement of female street artists in South America,

« Muchachitas pintoras », which is a project that uses graffiti and urban culture to combat violence against women. A campaign to inform women about their rights and a network of support against domestic, sexual and psychological violence has been created thanks to this project, that has been achieved by various female street artists. The movement members believe that graffiti can help make the world a better place, and generate positive social change.

Achievements

With her socially concerned murals, Anis is now regarded as one of the most important street artists in Chile. Nowadays, Anis is expanding her message through different parts of the world, sharing her vision through exhibitions and workshops that has been carried out in festivals, fairs and conferences. In 2015, she won first place of the Hecho En Casa festival, for which she painted a 10- meter-long mural.

Photos Copyright: Anis, www.anis88.cl

The mural above addresses the topic of female genital mutilation.

The girl finds herself in a city garden, while a light shines through her legs, revealing the rose which symbolizes her vagina, and discretely from every corner a knife and a pair of scissors threaten to cut it. The girl is also surprised by what is going on, and the light coming from the torch seeks to put the topic of female genital mutilation into the spotlight.

Communities, parents, teachers and children need to understand and discuss why female genital mutilation and excision are still being practiced, as this is putting the lives of many women and girls in danger. We all need to grasp why it is imperative to put an end to this harmful practice and which would be the best way to achieve this. There is a great need for public information in this field, whereby the means of mass communication can play a big part in conveying this message to the public. Men as well as women need to participate and commit themselves to the fight against female genital mutilation/excision.

It is important to prohibit by law the practice of female genital mutilation/excision. It may be difficult to implement such laws at the community level without a process of changing people's mindsets and attitudes towards this harmful practice. Authorities in charge of enforcing the law need to demonstrate their commitment to this cause by recording and investigating such cases. Doctors who carry out such procedures also need to be investigated and prosecuted under the provisions of said laws banning the practice of female genital mutilation/excision.

The mural can be found on street Lichtbogen number 334 in the city of Vienna, Austria.



Information Centre for Cross-Border-Support

One important task of the WAVE Office and its Information Centre is to deal with cross-border requests from women in need. Each month, WAVE receives cross-border requests for support from women survivors of violence, from family members of survivors, from women's support services, or from different institutions. The requests are often received when women have not been able to find sufficient support in

their countries, or when they find themselves in dangerous and high risk situations, are unaware of the support provided in their countries, or the situation is especially complex and involves cross-border assistance. In such cases, WAVE can refer survivors to appropriate services in their respective countries or may even provide support directly to survivors, whenever possible.

WAVE Network and European Information Centre against Violence (ZVR: 601608559)

Bacherplatz 10/6 1050 Vienna, Austria | Phone: +49 (0) 1 5482720 | Fax +43 (0) 1 5482720 27 | E-mail: office@wave-network.org | www.wave-network.org

WAVE Members (as of 12/2017)

1	Gender Alliance for Development Center (GADC)	Albania
2	Counselling Line for Women and Girls	Albania
3	Human Rights in Democracy Center (HRDC)	Albania
4	Women's Association Refleksione	Albania
5	Woman Forum Elbasan	Albania
6	Albania Women Empowerment Network (AWEN)	Albania
7	Woman to Woman	Albania
8	Women's Rights Center	Armenia
9	Women's Support Center	Armenia
10	Austrian Women's Shelter Network – Information Centre against Violence AÖF	Austria
11	Domestic Abuse Intervention Centre Vienna	Austria
12	Network of Austrian Counselling Centres for Women and Girls	Austria
13	Renate Egger (Individual Member)	Austria
14	Clean World Social Union	Azerbaijan
15	International Public Association “Gender Perspectives”	Belarus
16	Law Initiative – Commission on Women's Rights	Belarus
17	Collectif contre les Violences Familiales et l'Exclusion (CVFE)	Belgium
18	Department of Health and Welfare, Violence Victims and Policy Coordination – Province of Antwerp	Belgium
19	Garance ASBL	Belgium
20	Steunpunt Algemeen Welzijnswerk	Belgium
21	Foundation United Women Banja Luka	Bosnia and Herzegovina
22	Medica Zenica Information	Bosnia and Herzegovina
23	Bulgarian Gender Research Foundation	Bulgaria
24	Nadja Centre	Bulgaria
25	Alliance for Protection against Gender-Based Violence	Bulgaria
26	Autonomous Women's House Zagreb	Croatia
27	B.a.B.e, Be active, Be emancipated	Croatia
28	Women's Room – Center for Sexual Rights	Croatia
29	Centre for Women War Victims ROSA	Croatia
30	Mediterranean Institute of Gender Studies (MIGS)	Cyprus
31	Association of Women's Support Service Living (KAYAD)	Cyprus
32	Association for the Prevention and Handling of Violence in the Family	Cyprus
33	ProFem – Central European Consulting Centre	Czech Republic
34	ROSA – Centre for Battered and Lonely Women	Czech Republic
35	Kvinnuhusid	Denmark
36	L.O.K.K National Organisation of Women's Shelters in Denmark	Denmark
37	Estonian Women's Shelters Union	Estonia
38	Tartu Child Support Center	Estonia
39	Women's Shelter of Tartu	Estonia
40	Federation of Mother and Child Homes and Shelters	Finland
41	Women's Line Finland	Finland
42	Federation National Solidarite Femmes FNSF	France
43	Cultural Humanitarian Fund Sukhumi	Georgia
44	Sakhli Advice Center for Women	Georgia
45	Women's Information Center (WIC)	Georgia
46	Anti-Violence Network of Georgia	Georgia
47	BIG e.V. – Berliner Interventionsprojekt gegen häusliche Gewalt	Germany
48	Frauenhauskoordinierung e.V.	Germany
49	Geschäftsstelle des Bundesverbandes Frauenberatungsstellen und Frauennotrufe – Frauen gegen Gewalt e.V.	Germany
50	GESINE – Netzwerk Gesundheit.EN	Germany
51	Prof. Carol Hagemann-White (Individual Member)	Germany
52	KOFRA – Kommunikationszentrum für Frauen zur Arbeits und Lebenssituation	Germany
53	PAPATYA – Kriseneinrichtung für Junge Migrantinnen	Germany
54	ZIF – Zentrale Informationsstelle der autonomen Fraunhäuser des BRD Germany	Germany
55	Karin Heisecke (Individual Member)	Germany
56	European Anti-Violence Network	Greece
57	NaNe – Women's Rights Association	Hungary
58	Stigamot – Counselling and Information Centre on Sexual Violence	Iceland
59	Women's Shelter Organization in Iceland	Iceland
60	Sexual Violence Centre Cork	Ireland
61	Rape Crisis Network	Ireland
62	Safe Ireland	Ireland
63	Women's Aid Ireland	Ireland
64	Associazione Nazionale D.i.R.e contro la Violenza	Italy
65	Associazione Nazionale Volontarie Telefono Rosa-Onlus	Italy

66	Women's Wellness Centre	Kosovo
67	Krizu un Konsultaciju Centrs Skalbes	Latvia
68	Frauenhaus Fürstentum Liechtenstein	Liechtenstein
69	Vilnius Moteru Namai – Intervention Centre	Lithuania
70	Femmes en Detresse asbl	Luxembourg
71	National Council for Gender Equality - NGCE	Macedonia
72	National Network to End Violence against Women and Domestic Violence – Voice against Violence	Macedonia
73	Commission on Domestic Violence	Malta
74	Network Forum Malta	Malta
75	Dr. Marceline Naudi (Individual Member)	Malta
76	Association against Violence 'Casa Marioarei'	Moldova
77	Center for Support and Development of Civic Initiatives 'Resonance'	Moldova
78	Rehabilitation Center for Torture Victims “Memoria”	Moldova
79	Women's Law Centre	Moldova
80	SOS Hotline for Women and Children Victims of Violence Niksic	Montenegro
81	Federatie Opvang	Netherlands
82	MOVISIE	Netherlands
83	Secretariat of the Shelter Movement	Norway
84	Centrum Praw Kobiet	Poland
85	Autonomy	Poland
86	AMCV – Associacao de Mulheres Contra a Violencia Portugal	Portugal
87	A.L.E.G Association for Liberty and Equality of Gender	Romania
88	ANAIS Association	Romania
89	Artemis Counselling Centre against Sexual Abuse	Romania
90	CPE – Center Partnership and Equality	Romania
91	ANNA – National Center for Prevention of Violence	Russia
92	Crisis Centre Ekaterina	Russia
93	Nizhny Novgorod Women Crisis Center	Russia
94	Autonomous Women's Center (AWC)	Serbia
95	Association Fenomena / SOS Kraljevo	Serbia
96	Alliance of Women in Slovakia	Slovakia
97	FENESTRA – Interest Association of Women	Slovakia
98	Association SOS Helpline for Women and Children	Slovenia
99	Asociacion de Mujeres Valdes Siglo XXI	Spain
100	Fundacion para la Convivencia ASPACIA	Spain
101	Centro de Asistencia a Victimas de Agresiones Sexuales CAVAS	Spain
102	Directorate General for Gender-Based Violence, Youth Affairs and Juvenile Crime	Spain
103	Helia – Associacio de support a les dones que pateixen violencia de genere	Spain
104	Oficina de Gestion, Preparacion y Supervision de Programas Europeaos. Fundacion para la Atencion e Incorporacion Social (FADAIS). Consejeria para la Igualdad y Bienestar Social	Spain
105	Plataforma Unitaria contra les Violencias de Genere	Spain
106	Asociacion Otro Tiempo	Spain
107	Roks – National Organisation for Women's and Girls' Shelters in Sweden	Sweden
108	UNIZON	Sweden
109	Dachorganisation der Frauenhäuser der Schweiz und Liechtenstein	Switzerland
110	Vivre sans Violence	Switzerland
111	Terre des Femmes	Switzerland
112	Kadin Dayanisma Vakfi – The Foundation for Women's Solidarity	Turkey
113	Mor Cati – Women Shelters Foundation	Turkey
114	International Women's Rights Center la Strada	Ukraine
115	Sumy Local Crisis Center (SLCC)	Ukraine
116	Women's Information Consultative Center	Ukraine
117	Haven Wolverhampton	United Kingdom
118	IMKAAN	UK
119	Latin American Women's Aid	UK
120	NIA Ending Violence	UK
121	REFUGE	UK
122	Scottish Women's Aid	UK
123	Welsh Women's Aid	UK
124	Women's Aid Federation of England	UK
125	Women's Aid Federation Northern Ireland	UK
126	Melanie McCarry (Individual Member)	UK
127	Kathleen Rees (Individual Member)	UK
128	WWA – Aberystwyth Women's Aid	UK
129	Greta Squire (Individual Member)	UK
130	London Black Women's Project	UK
131	Zero Tolerance	UK