



# Parliamentary Assembly Assemblée parlementaire

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## Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers

Opinion<sup>1</sup>

Committee on Equal Opportunities for Men and Women

Rapporteur: Mr Jean-Guy BRANGER, France, Group of the European People's Party

### I. Conclusions

1. The Commission shares the concerns expressed by the Committee on Migration, Refugees and Population about setting up transit and processing centres in response to mixed flows of migrants and asylum seekers. It recognises that, although present migratory flows pose large challenges, in particular for European Union countries, the solutions considered must on no account be to the detriment of human-rights protection and Council of Europe and European Union countries' observance of their international obligations.

2. In particular, it is important to build a gender perspective into overall thinking on the matter since half of migrants, refugees and asylum seekers are women, who are faced with specific risks, challenges and problems.

3. In this connection the Committee takes the view that overall examination of the question of mixed flows of migrants and asylum seekers, which must be jointly conducted by the originating, transit and destination countries, should:

- include a gender dimension. The authorities operating such centres will, in particular, have to handle applications from migrants and asylum seekers in a way that does not *de facto* discriminate against women, and they will also have to ensure observance of women's fundamental rights, including gender equality, protect women from physical and psychological assault, and safeguard them from all forms of gender-based violence, particularly rape and forced prostitution;

- recognise grounds for requesting asylum that are based on sexual identity, more particularly including sexual violence, domestic violence, human trafficking, forced family planning, forced abortion, female genital mutilation, honour crimes and forced marriage;

- adopt, as part of lasting solutions for management of migratory flows, energetic policies that seek to prohibit and eradicate violence against women in the countries of origin, which can trigger migratory flows.

### II. Explanatory memorandum by the rapporteur, Mr Branger

1. Ms Jonker (Netherlands, EPP/CD) prepared a draft report on "Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers". The Committee on Equal Opportunities for Women and Men was asked for an opinion and appointed me as its rapporteur.

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<sup>1</sup> See Doc 11304, presented by the Committee on Migration, Refugees and Population

2. Ms Jonker's report looks at the possibility of establishing processing centres for irregular migrants and asylum seekers in European Union countries, non-EU countries or countries outside Europe. Paragraph 9 of the draft resolution states: "These are centres where persons are processed after having arrived in a country, been intercepted on their way to a country, been returned to a country through which they transited or been sent to a country where processing takes place".

3. The hope is that such centres would provide fresh answers to the challenge posed by the new migratory flows. However, it is important that, like Ms Jonker, we ask ourselves about the political and legal implications of setting up such transit and processing centres: as pointed out in paragraph 40 of the explanatory memorandum, "European countries [will] have significant practical challenges in order to make [such] centres compatible with their domestic legislation and international commitments (at EU level, Council of Europe level and UN level)".

4. Half of migrants, refugees and asylum seekers are women<sup>2</sup>, who are faced with specific risks, challenges and problems which the Parliamentary Assembly has previously addressed. In its work on the situation of women refugees in Europe it highlighted "certain practices applied to refugee women during and after the status determination procedure in host countries, which may result in violation of their human rights"<sup>3</sup>. With regard to arrival of asylum seekers at European airports, the Assembly said that member states should "provide separate accommodation for women and men, except for families, which preferably should stay together, even for a short stay"<sup>4</sup>. It also upheld "the right of women seeking asylum to apply separately from their spouses or companions in consideration of their specific needs and motivations"<sup>5</sup>. More recently it has highlighted the difficulties and obstacles encountered by women migrants in Europe<sup>6</sup>.

5. It is essential that current reflection about setting up transit and processing centres take into account special gender-related factors and build a gender perspective into processing of women, whether migrants or asylum seekers.

6. I would firstly point out that reception, care and monitoring of women in transit and processing centres must be compatible with member states' democratic principles, including gender equality, and must reject any discriminatory practice that would amount, legally or *de facto*, to unequal treatment of women and men. Provision for women migrants and women asylum seekers more particularly requires trained staff, facilities for individual interviewing of women (without a husband's or companion's being present) and it must take due account of the specific problems of women interviewees, who may have difficulty giving statements because of the persecution experienced (in particular of a sexual nature) or discriminatory cultural practices that relegate women to a secondary role in the society of origin, deprive them of autonomy and self-esteem or result in women's internalising certain forms of persecution linked to gender. All of this may explain why men are generally in the majority in seeking asylum. More men than women apply for asylum and are granted it.<sup>7</sup>

7. In view of the Council of Europe's pan-European campaign to combat violence against women, including domestic violence<sup>8</sup> (2006-2008), I would like to devote attention to the question of gender-based violence towards women migrants and women asylum seekers. The Committee on Equal Opportunities for Women and Men has several times discussed the issue in its work on integration of women immigrants and specific measures to assist women victims of domestic violence.

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<sup>2</sup> See unfpa.org, "State of World Population 2006", unhcr.org/statistics, and United Nations High Commissioner for Refugees, "2005 Global Refugee Trends" (June 2006), p.7.

<sup>3</sup> Paragraph 4 of Recommendation 1374 (1998) and Document 8066.

<sup>4</sup> Paragraph 10.ii.a of Recommendation 1475 (2000).

<sup>5</sup> Paragraph 6.v.c.iv of Recommendation 1440 (2000) on restrictions on asylum in the member states of the Council of Europe and the European Union..

<sup>6</sup> Recommendation 1732 (2006), Resolution 1478 (2006) and Document 10758 on integration of immigrant women in Europe.

<sup>7</sup> In 2000 women accounted for only 33% of asylum requests in Canada and in 2002 for around a third of such requests in Europe (State of World Population 2006, *ibid.*).

<sup>8</sup> [www.coe.int/stopviolence](http://www.coe.int/stopviolence).

8. It has to be acknowledged that, in recent years, international institutions have produced migration-management instruments which widen the grounds on which asylum can be granted for gender-related violence or based on sexual identity.

9. In 2002, the Office of the High Commissioner for Refugees (HCR) published a series of international guidelines stating that the international definition of refugees required that requests for refugee status based on sexual identity be granted<sup>9</sup>. Grounds for requesting asylum on the basis of sexual identity may include sexual violence, family violence, human trafficking, forced family planning, forced abortion, female genital mutilation/circumcision, honour crimes, forced marriage, punishment for conduct contrary to local custom and discrimination against same-sex partners.

10. An April 2004 directive (the “Qualification Directive”) of the European Union Council of Ministers<sup>10</sup> states (Article 9) that acts of persecution within the meaning of Article 1A of the Geneva Convention can, *inter alia*, take the form of a) acts of physical or mental violence, including acts of sexual violence; b) legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; f) acts of a gender-specific or child-specific nature. In this connection, the European Women’s Lobby welcomed the fact that, for the first time, a directive actually named practices which systematically discriminated against women, recognising them as persecution and therefore as creating entitlement to seek protection. To adequately transpose the directive, it said, “gender-sensitive asylum guidelines [were] necessary to assist national authorities in understanding the nature of gender-based persecution and to link it to the legal framework”<sup>11</sup>.

11. The European Parliament Committee on Women’s Rights and Gender Equality has pointed out that “specific criteria need to be introduced for granting asylum or specific humanitarian status” to women victims of gender-specific persecution as referred to in Directive 2004/83/EC, and it suggested drawing up, “rather than a list, a set of criteria taking into account the protection of fundamental rights”, including “protection for women and children who [were] victims of sexual, domestic or gender-based violence”<sup>12</sup>.

12. But despite this progress at institutional level, states are sometimes very slow to recognise sexist persecution as a ground for granting refugee status. Although the European Union is aiming to introduce an asylum system common to all its member states by 2010, each country currently holds to its own policies. Seventeen of the forty-one European countries surveyed for an HCR study in 2004 explicitly recognised sexual violence as a form of persecution, but not the other twenty-four. Just over half of them recognised that discrimination could constitute a form of persecution, but three-quarters of them did not recognise sexual exploitation or forced prostitution in their asylum procedure. Two-thirds, however, recognised the existence of non-state agents of persecution<sup>13</sup>.

13. Some European Union countries have still not incorporated Directive 2004/83/EC in their domestic law, though incorporation was supposed to have been completed by 10 October 2006. The European Commission is to report to the Council and the European Parliament on implementation of the present directive, putting forward amendments if appropriate, by 10 April 2008. I am particularly looking to the European Commission to include in its assessment recognition of gender-based persecution as a ground for granting refugee status.

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<sup>9</sup> UNHCR: Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, quoted by the United Nations Population Fund ([www.unfpa.org](http://www.unfpa.org)), “State of World Population 2006”.

<sup>10</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>11</sup> EWL position “Asylum is not gender-neutral – EWL reminds governments of their obligations to transpose the EU Qualification asylum directive and invites them to adopt gender-sensitive asylum guidelines”. See [www.womenlobby.org](http://www.womenlobby.org).

<sup>12</sup> Paragraph 12 of the Opinion of the FEMM Committee on “Asylum: practical cooperation and quality of decision-making in the common European asylum”, 25 January 2007 (2006/2184 (INI).

<sup>13</sup> H. Crawley, H. and T. Lester. 2004. Comparative Analysis of Gender-Related Persecution in National Asylum Legislation and Practice in Europe (EPAU/2004/05), pp. 35, 43, 48 and 58, quoted by [unfpa.org](http://unfpa.org), “State of the World Population 2006”.

14. In the circumstances I would like to see that overall reflection on mixed flows of migrants and asylum seekers, which needs to be conducted jointly by the originating, transit and destination countries, should:

- include a gender dimension. The authorities operating such centres will, in particular, have to handle applications from migrants and asylum seekers in a way that does not *de facto* discriminate against women, and they will also have to ensure observance of women's fundamental rights, including gender equality, protect women from physical and psychological assault, and safeguard them from all forms of gender-based violence, particularly rape and forced prostitution;
- recognise grounds for requesting asylum that are based on sexual identity, more particularly including sexual violence, domestic violence, trafficking in human beings, forced family planning, forced abortion, female genital mutilation, honour crimes and forced marriage;
- adopt, as part of lasting solutions for management of migratory flows, energetic policies that seek to prohibit and eradicate violence against women in the countries of origin, which can trigger migratory flows.

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*Reporting committee:* Committee on Migration, Refugees and Population

*Committee seized for opinion:* Committee on Equal Opportunities for Women and Men

*Reference to Committee:* Doc 10448, reference N°3059 of 18 March 2005 (extended until 31.12.07)

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Secretariat of the Committee: Ms Affholder, Ms Devaux, Mr Diallo, Ms Araujo.