

# REFUGEE WOMEN AND THE ISTANBUL CONVENTION



Proceedings  
based on the hearing

Preventing and combating  
sexual and gender-based  
violence

Organised by the Parliamentary  
Network "Women Free from Violence",  
the Committee on Migration,  
Refugees and Displaced Persons  
of the Parliamentary Assembly  
of the Council of Europe  
and the United Nations High  
Commissioner for Refugees (UNHCR)

Strasbourg  
23 January 2013



# **REFUGEE WOMEN**

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## Foreword

by José Mendes Bota,  
Giacomo Santini,  
and Olivier Beer



**José Mendes Bota** (Portugal, EPP/CD) was appointed General Rapporteur on violence against women by the Committee on Equality and Non-Discrimination in early 2012. His role is to contribute to raising awareness on the phenomenon of violence against women among the general public and institutions, be they governmental or non-governmental, and to promote the Istanbul Convention. Mr Mendes Bota also ensures the political co-ordination of the Parliamentary Network Women Free from Violence.



**Giacomo Santini** (Italy, EPP/CD) is the Chair of the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe. He has been a member of the Italian Senate from 2006 to 2013, and of the European Parliament from 1994 to 2004. Previously he worked as a journalist for the Italian national television (RAI).



**Olivier Beer** joined UNHCR in 1997, in Rwanda, as an Associate Protection Officer and in recent years has been acting as a Senior Protection Officer in various African countries. From August to December 2008, he was appointed as Senior Liaison Officer and Head of Antenna in Cape Town, South Africa, in order to co-ordinate and organise with other UN agencies and Governmental authorities the response to the outbreak of xenophobic violence that targeted thousands of foreigners in South Africa in May 2008. Since January 2009, he has been the UNHCR Representative to the Council of Europe.

There are estimated to be 685,000 female refugees in the 47 Council of Europe Member States. For the 22 member states of the Council of Europe for which demographic data is available, 44% of the refugee population is made up of women.

Today, across the world, more than 33 million people are persecuted and forcibly displaced because of wars. Women and girls represent half of this population. Gender-based violence affects mostly women and girls. Many of their asylum claims involve fear of gender-based violence, including trafficking for sexual and labour exploitation, forced marriage, forced sterilisation, domestic violence, female genital mutilation, the threat of so-called “honour” crimes, sexual violence and rape.

Regrettably, asylum systems often fail them. All too often, when applying the United Nations 1951 Geneva Convention relating to the Status of Refugees, states fail to acknowledge and take into account the differences in how women and men experience persecution. Furthermore, asylum procedures often do not create the conditions for women to tell their full story.

This gender blindness results in inconsistent asylum decisions and deprives many women of international protection.

To remedy this state of affairs, the United Nations High Commissioner for Refugees (UNHCR) has issued a wealth of guidelines to help states introduce a gender-sensitive perspective when considering asylum applications. These guidelines address a variety of topics, including gender-related persecution, the interpretation of “membership of a particular social group”, the application of the 1951 Convention to victims of trafficking, female genital mutilation and sexual orientation and gender identity.

For its part, the Parliamentary Assembly of the Council of Europe has consistently drawn attention to these matters, and has adopted several texts including Resolution 1765 (2009) and Recommendation 1940 (2010) on *Gender-related claims for asylum*, Resolution 1697 (2009) and Recommendation 1891 (2009) on *Migrant women: at particular risk from domestic violence*.

Above all, the Assembly has put all its political weight to support the *Convention on preventing and combating violence against women and domestic violence*. Opened for signature on 11 May 2011 in Istanbul, this Council of Europe convention is the first legally-binding instrument in Europe in the field of violence against women and domestic violence, and the most far-reaching international treaty to tackle this serious violation of human rights.

The Istanbul Convention, addresses the specific issues faced by women asylum seekers in making explicit reference to the protection of refugee women from violence and establishing several obligations in relation to asylum claims for State Parties. In particular it requires states to recognise gender-based violence as a form of persecution under the Refugee Convention, and also to ensure a gender-sensitive interpretation to the grounds of persecution and develop gender-sensitive reception procedures.

The hearing organised jointly by UNHCR, the Parliamentary Network “*Women Free from Violence*” and the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe was an opportunity to raise awareness on the complementarity between these two instruments in respect of the protection of refugee women; to inform participants on relevant case-law of the European Court of Human Rights; and more broadly to promote the ratification of the Istanbul Convention.

## The Istanbul Convention

Opened for signature in Istanbul in May 2011, the **Council of Europe Convention on Preventing and Combating Violence** against women and domestic violence (Istanbul Convention) is the first legally-binding instrument in Europe in this field, and in terms of scope, the most far reaching international treaty to tackle this serious violation of human rights.

It recognises violence against women as a violation of human rights and a form of discrimination. This means that states are held responsible if they do not respond adequately to such violence.

It is the first international treaty to contain a definition of gender. This means that it is now recognised that women and men are not only biologically female or male, but that there is also a socially constructed category of gender that assigns women and men their particular roles and behaviours. Research has shown that certain roles and behaviours can contribute to make violence against women acceptable.

It introduces a set of groundbreaking criminal offences such as female genital mutilation, forced marriage, stalking, forced abortion and forced sterilisation. This means that states will have to introduce important offences which did not before exist in their legal systems.

By accepting the Istanbul Convention, governments are obliged to change their laws, introduce practical measures and allocate resources to effectively prevent and combat violence against women and domestic violence.

[www.coe.int/conventionviolence](http://www.coe.int/conventionviolence)

**The Istanbul Convention will enter into force once ten countries have ratified it; eight of which must be Council of Europe member states**

## The Geneva Convention on the Status of Refugees

### “1951 Convention”

The 1951 Convention relating to the Status of Refugees (“1951 Convention”), which was later amended by the 1967 Protocol, clearly spells out who is a refugee and the kind of legal protection, other assistance and social rights a refugee is entitled to receive. It also defines a refugee’s obligations to host countries and specifies certain categories of people, such as war criminals, who do not qualify for refugee status. Initially, the 1951 Convention was more or less limited to protecting European refugees in the aftermath of World War II, but the 1967 Protocol expanded its scope as the problem of displacement spread around the world.

### Who does the 1951 Convention protect?

The 1951 Convention protects refugees. It defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of

the protection of that country, or to return there, for fear of persecution (see Article 1A(2)). People who fulfill this definition are entitled to the rights and bound by the duties contained in the 1951 Convention.

### What rights do refugees have under the 1951 Convention?

The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host country. The cornerstone of the 1951 Convention is the principle of non-refoulement contained in Article 33. According to this principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom. This protection may not be claimed by refugees who are reasonably regarded as a danger to the security of the country, or having been convicted of a particularly serious crime, are considered a danger to the community.

Source: [www.unhcr.org](http://www.unhcr.org)

# The Istanbul Convention and the 1951 Geneva Convention on the Status of Refugees

## COMPLEMENTARITY

### The refugee definition (Article 1A of the 1951 Geneva Convention)

A refugee is a person who is outside his/her country of origin /habitual residence and has a well-founded fear of persecution based on one or more of the five 1951 Convention grounds: race, religion, nationality, membership of a particular social group, or political opinion. This person shall be unable or unwilling to avail himself/herself of the protection of that country, or to return there, for reasons of fear of persecution.

### Gender-based asylum claims (Article 60 of the Istanbul Convention)

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be 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.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

### The obligation of non-refoulement (Article 33 of the 1951 Geneva Convention)

1. No Contracting State shall expel or return («refouler») a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

### The obligation of non-refoulement (Article 61 of the Istanbul Convention)

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

## Indira Mila

“I left my country because I was a battered wife.  
When I left, I took nothing at all with me because my husband was so violent.  
I heard talk of battered women on the radio, and that there was a shelter. In my own country,  
I did not feel protected. I truly lived in fear.”

*With no official protection whatsoever,  
Indira made up her mind to leave her country and family.*

*Deprived of information, Indira applied neither for asylum  
nor for subsidiary protection status.*

*Thus she had no entitlement.*

“I was not informed, I knew nothing about it.  
And even my son-in-law was afraid for his own sake;  
he did not know which doors to knock at to find explanations,  
which moves should be made.”

*One day Indira was arrested at the station.*

“They came straight towards us, they began asking for our papers,  
I had no papers and I knew very well that there would be trouble.  
And then they took me away to the police station. They began inquiring,  
making calls to the embassy, to my country to see, to check.”

“I was handcuffed. There were no policewomen, you are searched by men,  
I found that odd. In those cases, they treat you like a criminal,  
I regarded myself as such.”

*Before the enforcement of the expulsion order, Indira lodged an asylum request.  
Her country is a purportedly “safe” one. Her asylum request was rejected.*

*Fortunately Indira was able to obtain a temporary status.  
She is working today and contributes to society.  
Some of her children have remained in her country, and she cannot see them.*





## “A robustly gender-sensitive interpretation of the existing asylum grounds is required to address the widespread gender blindness in granting refugee status”

Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe



Mrs Battaini-Dragoni joined the Council of Europe in 1976 as an educational adviser at the European Youth Centre. Ms Battaini held several positions, including those of Director General of Social Cohesion, the first woman ever to be nominated to that position in the Council of Europe and Director General of Programmes. Gabriella Battaini-Dragoni was elected to the post of Deputy Secretary General in June 2012 and took up her duties in September 2012.

When women seek asylum in Council of Europe member states, they often do so for reasons closely linked to the very fact that they are women.

Women are denied an equal standing with men on fundamental legal matters in too many countries. The police and judicial authorities may refuse to concern themselves with “domestic matters”, which involve abuse, rape, torture or other severe harm. Women may also be forced to undergo certain traditional practices, such as female genital mutilation. They can be denied their human rights or are severely punished for transgressing fundamentally discriminatory social norms.

In our European societies, we find all these circumstances deeply unfair and some outright hideous. But they are not necessarily grounds for persecution recognised by the UNHCR 1951 Convention relating to the Status of Refugees.

Some of our member states have therefore developed practices to fill this gap and grant subsidiary protection on humanitarian grounds. Other states adopt a very wide interpretation of persecution on the grounds of belonging to a social group and consider, for example, women fleeing female genital mutilation as belonging to a particular social group.

However, this is not the practice in all our member states, which is why the Istanbul Convention on preventing and combating violence against women and domestic violence seeks to ensure that gender-based violence against women is recognised as a form of persecution within the meaning of the UNHCR 1951 Convention relating to the Status of Refugees, or such violence should give rise to subsidiary protection.

This approach should be indisputable since the very aim of the Istanbul Convention is to protect all women from gender-based violence.

Another essential element in the protection of women asylum seekers is keeping them safe throughout the application procedure. The Istanbul Convention requires governments to introduce practical safety measures for unaccompanied women asylum seekers including safe and separate dormitories to minimise risks such as sexual abuse. It also requires granting these women access to medical and psychological counseling and trauma care.

The Istanbul Convention has become widely recognised as an important and practical tool to combat all forms of violence against women. It offers an extremely comprehensive set of legally-binding standards aimed at preventing violence, protecting the victims and prosecuting the offenders, through comprehensive and integrated national policies.

This year will undoubtedly bring many more ratifications of the Istanbul Convention, but the momentum must be kept up. The work and the activities of the Parliamentary Network “Women free from violence” towards the promotion of the Convention has been vital and I would like to invite all the members to continue with the good work.

Co-operation between the Council of Europe and the UNHCR dates back to 1951. Currently, it focuses in particular on the protection and promotion of the rights of refugees, asylum-seekers and internally-displaced persons, and on the prevention and reduction of statelessness. The UNHCR Representation in Strasbourg, as well as the Council of Europe Office in Geneva, provides an important interface.

In a resolution adopted by consensus last December, the UN General Assembly, whilst welcoming the increasingly close relations between the Council of Europe and the UN, also encouraged continuing co-operation between the Council of Europe and UNHCR.

A robustly gender-sensitive interpretation of the existing asylum grounds is required to address the widespread gender blindness in granting refugee status. Indeed gender can have an impact on the reasons behind the type of persecution or harm suffered.

This means that gender-sensitive procedures will have to be introduced into the determination process to enable all women asylum seekers to disclose facts related to horrific

and traumatising acts, such as rape, female genital mutilation and other forms of gender-based violence.

As parliamentarians and citizens, you are in a key position to give a voice to women in this situation, to shape the normative framework, and to remind governments of their obligations.

I count on your support.

## Articles 60 and 61 of the Istanbul Convention

### Protection of Refugee Women

by Fadela Novak-Irons, Policy Officer - UNHCR - Bureau for Europe



**Fadela Novak-Irons** is a New Zealand citizen who, before joining UNHCR in 2007, was the Manager of the New Zealand first instance asylum authority, and later the Manager of the New Zealand Settlement (Integration) Strategy for migrants and refugees. In her current position with the UNHCR Bureau for Europe, Fadela is the focal point on gender and sexual and gender-based violence issues.

**Refugee women** and girls amount to about 50% of the persons of concern to UNHCR worldwide (30% in Europe). Many asylum claims by women involve fear or experience of gender-based violence, complex legal issues or fear of violence by non-state actors, and a reasonable proportion of claimants are survivors of violence who may suffer from trauma.

Traditionally, the interpretation of the definition of refugee is gender-blind. Consequently, the women's experiences of persecution because they are women, the specific forms of persecution to which women are particularly vulnerable and the possible gender dimensions of the definition as a whole are not taken into consideration. If some national asylum legislation mentions gender and/or gender-based persecution, there is a lack of harmonised and common approaches. For these reasons, provisions on asylum have been incorporated in the Istanbul Convention.

**Articles 60 and 61 – An added value** Both articles enshrine in the law the important developments, previously in the soft law and jurisprudence, in international refugee law. Indeed, these articles provide a legal basis for common and shared interpretation of key concepts. For instance, gender-based violence may now amount to persecution and serious harm and a gender-sensitive interpretation of each of the 1951 Convention grounds is now required.

Asylum provisions are now placed within a comprehensive framework, which includes definitions (Art. 3), state obligations and due diligence (Art. 5), data collection (Art. 11), and general prevention and protection provisions.

**The way forward** lies in promoting the ratification of the Convention and ensuring there are no reservations in relation to Articles 60 and 61. It is equally important to develop jurisprudence<sup>1</sup> and credibility assessment. Finally, member states should also develop and implement national guidelines (in relation to substantive and procedural issues) for asylum systems.

**Gender-sensitive reception conditions** It is important to see practical steps taken in the way women victims of gender based violence are received. For instance, separate accommodation and toilet facilities, lockable rooms and adequate lighting throughout the reception centre should be available to victims. A 24/7 protection by guards, including female guards, should also help protecting victims. Appropriate training and formal procedures for intervention and protection should be in place in reception centres. Victims should also have access to specialised/assistance services and information in relation to gender-based violence. Finally, monitoring and reporting mechanisms should be created.

**Gender-sensitive asylum procedures** Victims should be informed on the reception and asylum procedures and have the opportunity for personal interviews, separately and without other family members. They should also have the opportunity to raise independent needs for protection, have access to a same-sex asylum interviewer and interpreter. The information given by the victim should also be kept confidential from family members. Gender guidelines on the adjudication of asylum claims and training should be made available.

1. See Membership of a particular social group – The “Ground with the least clarity” (UNHCR, April 2012) and Women and girls fleeing conflict – Gender and the interpretation and application of the Refugee Convention (UNHCR, Sept. 2012).

**Gender-sensitive adjudication of asylum claims** Such claims should take into account gender in the credibility assessment, use the gender-relevant country of origin information available, have a gender-sensitive interpretation of the forms of persecution/serious harm suffered and/or feared and their reasons, the (absence of) state protection, and the possibilities for internal relocation alternatives.

<b>UNHCR Guidelines on Gender</b>	<b>Other UNHCR guidance documents</b>
<ul style="list-style-type: none"> <li>• 2002 - Gender-Related Persecution</li> <li>• 2002 - Membership of a Particular Social Group</li> <li>• 2003 - Internal Flight or Relocation Alternative</li> <li>• 2004 - Religion-Based Refugee Claims</li> <li>• 2007 - Victims of trafficking</li> <li>• 2009 - Child asylum claims</li> <li>• 2012 - Sexual Orientation and/or Gender Identity</li> </ul>	<ul style="list-style-type: none"> <li>• 2009 - Female Genital Mutilation</li> <li>• 2010 - Victims of organized gangs</li> <li>• 2006 - Coercive family planning laws or policies</li> <li>• UNHCR ExCom Conclusions: No. 39, 54, 64, 73, 93, 99, 105</li> <li>• UNHCR Action against Sex Gender-Based Violence (updated strategy, 2011)</li> </ul>

## Female genital mutilation: one of the forms of violence covered by the Convention

20 000 women and girls seek asylum from female genital mutilation (FGM) practicing countries of origin in the EU every year, including over 3 000 girls under 14. Amongst these, around 9 000 are likely to already be affected by FGM. About 300 girls under 14 were granted international protection in 2011. FGM may be recognised as a form of persecution and serious harm and trigger the *non-refoulement* principle.

### Did you know?

#### At the United Nations...

On 20 December 2012, the United Nations General Assembly adopted its first-ever text aimed at intensifying global efforts for the elimination of female genital mutilations: Resolution A/RES/67/146.

The UN General Assembly has recognised that these mutilations are an irreparable, irreversible abuse of the human rights of woman and girls, and reaffirmed it as a serious threat to their health. The adoption of this text sends a strong political message, and one of hope for the millions of women and girls facing that odious practice.

“Harmful practices, such as genital mutilation, constitute a serious threat to the health of millions of women and girls worldwide and violate their fundamental rights,” said a statement issued by Mr Ban Ki-moon’s spokesperson.

The landmark agreement adopted by the UN in March during the Commission on the Status of Women (CSW) represents another step forward. According to this document supported by 193 countries, no custom, tradition or religious consideration can justify violence against women.

#### In France...

Between 2008 and 2011, France granted international protection to 1 775 women and girls. They mainly came from Guinea, Mali, Mauritania, but also from Congo. Children and young people born in France and nationals from a country practicing female genital mutilation are granted particular specific protection. Following a decision by the State Council of 21 December 2012, they can be protected under the 1951 United Nations Convention relating to the Status of Refugees. Since 5 April 2013, their parents can now also be granted a residence permit.

## “The cutting of the hundred girls”

### Testimony of Ms Djenabou Teliwel Diallo



Djenabou Teliwel Diallo comes from Guinea-Conakry. She has lived in Belgium for 3 years. She obtained refugee status in 2011 and actively campaigns against female genital mutilation (FGM)

**“I underwent excision for the first time at the age of 8 in my grandmother’s home. I was one of about a hundred girls. I could see my mother looked sad and strange but did not understand what was happening.”**

**“We were all excised without anaesthetic. The pain was so bad that my screams were caught in my throat. Herbs were applied to my wound to staunch the blood, they clothed me again, and I joined the others.”**

**“Guinean Muslim men do not marry an un-excised girl as they are convinced that the clitoris brings about male impotence and that a child may die if it touches its mother’s clitoris at birth. A girl who is not excised is not integrated in society. Therefore she has no choice.”**

I underwent excision for the first time at the age of 8 in my grandmother’s home. I was one of about a hundred girls. I could see my mother looked sad and strange but did not understand what was happening. She sent me to one of her friends who supposedly had to hand over her money to me, but it was only a pretext. On arrival at her friend’s, I saw my grandmother and another excisionist there. I was told that I must join the group of girls already waiting in the hut (it was the long vacation, which is often when girls are excised). There is a name for it: the cutting of the hundred girls.

They told me that if I wished to marry one day or just be able to play with girls of my age, I had to go through excision. I did not know what it involved; I knew that groups of girls were brought, that a celebration was held for them and it was said that female genital mutilation was a stage to go through in becoming a woman. That is, the pain was masked by festivities.

I joined them since I had no choice. There were a hundred of us. Many were known to me: friends, neighbours, girls from nearby villages. They were aged from 8 to about 20 years. Two old ladies who did excisions, one being my grandmother on my father’s side, and two other women, took us out into the deep bush. While they were excising the girls one by one, the others waited their turn. We were afraid because we heard screams but at the same time we thought it was shameful to cry out because we had to go through with it in order to become grown women, and so we must put on a brave face. That was why we submissively waited our turn. We were all excised without anaesthetic. The pain was so bad that my screams were caught in my throat. Herbs were applied to my wound to staunch the blood, they clothed me again, and I joined the others.

Fear was mingled with incomprehension. Each one wanted to weep, but the words would not come out. We felt close

to each other in our pain, but at the same time we felt very much alone because we had just suffered pain inflicted on us by our family. We were all brought into a large house where we stayed for two weeks until the wound healed. The two excisionists remained with us to keep an eye on the progress of the wound. Our mothers, aunts and the women of the families came to visit us.

None of us made any reproach whatsoever to her family. We experienced a feeling of anger which we could not express. I have never spoken of it with my mother or father either. My mother was just happy that it was done. For her, it was a duty that she had discharged. When I turned 15, during holidays spent at my grandmother’s, one day she wanted to check whether my excision was nicely and properly done. She looked, said nothing to me right then, but the next day told me that I should absolutely go back to her friend to do the excision again because to her mind it was botched and I must finish the work begun.

I wanted to object, but she convinced me by telling me that if I didn’t, I would never have any husband, any child, and would be abandoned by my family, my friends and everyone knowing that I was poorly excised.

I went back with her to her excisionist friend and they removed the remaining flesh from me. Unfortunately they cut into a vein and there was severe bleeding, I lost consciousness and came to in hospital. I found out that it had almost been the end of me.

I hated my entire family, especially my mother, and my grandmother. I felt no anger against my father because fathers are not, and do not feel, concerned, they are completely in the background and sometimes not even told that an excision has taken place until after recovery. So it was my mother and grandmother that I hated. But I said nothing to them.

When a little girl or a young girl has a problem in her life, she naturally turns to her mother, but when her mother brings the problem upon her, she no longer knows where to go. Considering that here with excision it is something inflicted by our mothers, we have nobody else to turn to. We find ourselves prostrated and powerless. I bore a big grudge against my mother. Later when I campaigned against excision, I realised how deeply she had been indoctrinated by tradition like all the other mothers. They do it in spite of themselves, they feel bound to it because they think it's for the good of their child.

So I was re-excised and can vouch for the fact that this practice really does exist in Guinea and is growing even as I speak to you. Unlike the first excision, the second is not talked about because it happens discreetly without any ritual.

The aim here is to rectify an excision which was not properly done. Only the first excision is attended by the group ritual. If an excision has to be performed over again, the term "re-excision" is not even used. The girl is simply sent to an excisionist who finishes the job as if repairing an error. So the entourage is not necessarily informed of the event which is considered commonplace.

Guinean Muslim men do not marry an un-excised girl as they are convinced that the clitoris brings about male impotence and that a child may die if it touches its mother's clitoris at birth. A girl who is not excised is not integrated in society. Therefore she has no choice.

Guinean men and the in-laws will therefore be concerned to verify that a girl is in fact excised once she is married. On the evening of the wedding night, they will go so far as to check with an electric torch that she is well excised. It may also be someone sent by the in-laws who goes to check whether or not the excision is properly done.

Oddly enough, it often happens that a man has sexual relations with his badly-excised wife and so is able to realise that it did not cause him any risk of impotence, but he nonetheless demands to have his wife excised again. In fact he will not feel altogether safe with his wife until she is perfectly excised. Consequently, it is deeply rooted in people's attitudes.

Unfortunately, besides excision and re-excision, Guinean women are coerced into forced marriage, that is compelled to marry men without being asked for their consent. They are sold like private property, and once the husband has died they are obliged to be given as a bequest from their dead husband to one of his brothers, which is called levirat.

The consequences and complications arising from excision are still present years later. A woman who has been excised can most often end up either sterile or with STI, but the

excisionists do not make the connection with excision. The couple's sex life is based on huge incomprehension: the man, to bolster his virility, wishes to see his wife experience pleasure during sexual relations and does not understand why excision has made her insensitive or worse, has made the sex act painful for her.

Consequences: most women simulate pleasure and men make no effort to understand their wives' sexuality.

There is no protection in Guinea against excisions, whether for little girls or for the militant women opposing excision. Yet there is a law of 10 July 2000 against excision prescribing a penalty for anyone who performs excision, but to the best of my knowledge it has never been enforced.

Excision is a tradition strongly upheld by Islamists who are themselves supported by the security forces. Military personnel find that they have no business to meddle with customs and traditions. As a result, lodging a complaint comes to nothing. I committed myself to this struggle against genital mutilation the day when militants from a Guinean NGO came to my high school when I was 17 years of age, on the occasion of the International Day of Zero Tolerance to Female Genital Mutilation. Until then I was unaware that there were people fighting excision. I said to myself that it was the opportunity for me to express what I had buried in my innermost self since I had undergone the two excisions.

As a militant, I discussed excision ad infinitum with people, on every organised or other occasion: it could be in youth centres, on television, radio, at weddings, baptisms, festive events. Actually I intended to speak as much as possible with little girls, sometimes with the mothers, to inform them about the dangers of excision, dissuade mothers from resorting to it, and try to urge children to rebel the day their excision was to take place. Most of the time, people dared not give their opinion because they were afraid, but they were interested; others accused me of talking about sex and it wasn't the done thing, some refused me entry to their homes. Many dislike me in my neighbourhood and in all districts where I tried to make women and girls aware. Having myself been haunted by dreadful memories and with the living marks of this barbarity on my body, in my innermost self I decided to campaign against female genital mutilation. I got myself rejected by those around me and antagonised the military and the fanatical champions of this practice.

To me, the most important thing is to fight the wounding inflicted on these girls who often lose their lives by it, or forfeit their dreams when the sometimes very grave consequences prevent them from having children and living a normal life.

## European Convention on Human Rights – relevant articles

### Article 2 – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## Seeking protection before the European Court of Human Rights – relevant case-law

By Judge Päivi Hirvelä



**Judge Päivi Hirvelä** (Doctor of Law) started her career at the District Court of Lapland where she trained, and then worked as a Legal Aid Counsel, Referendary, Judge and Prosecutor in the Finnish judicial system. She also worked as a Researcher at the University of Helsinki, a temporary Lawyer at Registry of the European Court of Human Rights and was a member of several working groups set up by various Ministries and other State services. Judge Päivi Hirvelä is also a Lecturer in the field of criminal procedure and Human Rights.

Judge Päivi Hirvelä began her post as a judge on the European Court of Human Rights on 1 January 2007.

“Across Europe, women make up one third of those applying for asylum in their own right. Very often they are fleeing because of the violence directed against them at home. [...] Sometimes the European Court of Human Rights is the last resort for asylum seekers.”

“It is of crucial importance for women’s human rights that the Istanbul Convention is an instrument to interpret the Geneva Refugee Convention as recognizing gender based violence against women as persecution in the meaning of the Refugee Convention. [...] I am sure that the [Istanbul] Convention will make the world safer for women and better for all people and hope that it enters into force as soon as possible.”

“Often trafficked women are in the country illegally and under threat of being returned. The traffickers of course use this threat. Nowadays the states are more aware of this phenomenon and persecution by the traffickers.”

**If certain member states consider domestic violence as being a private matter, the European Court of Human Rights considers otherwise.**

*Opuz v. Turkey – 2009*

Nahide Opuz and her mother were assaulted and threatened over many years by Nahide’s husband. However, no prosecution was brought against him on the grounds that both women had withdrawn their complaints. He subsequently stabbed his wife seven times and was given a fine equivalent to about 385 euros. Finally, when the two women were trying to move away, he shot dead his mother-in-law for which he was convicted of murder and sentenced to life imprisonment but released pending his appeal, whereupon his wife claimed he continued to threaten her.

The Court found a **violation of Article 2 (right to life)** concerning the murder of the mother-in-law and a **violation of Article 3 (prohibition of inhuman or degrading treatment)** concerning the State’s failure to protect Ms Opuz. The Court found that Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn.

The Court also found – for the first time in a domestic violence case - **violations of Article 14 (prohibition of discrimination)** as the violence suffered by the two women was gender-based; domestic violence mainly affected women and it was encouraged by discriminatory judicial passivity. Turkey was not committed to tackling the problem: police officers tried to persuade women to drop their complaints, delays were frequent and courts mitigated sentences on the grounds of honour or tradition.

**Often, applicants, victims of gender-related violence (including female genital mutilation), fail to substantiate their allegation that they would face a “real and concrete risk” of being subjected to violence if expelled indicating that the threshold in finding a violation if deported is very high.**

*A.A. and Others v. Sweden – 2012*

A.A. and her five children, Yemeni nationals currently living in Sweden, alleged that, if deported to Yemen, they would face a real risk of being the victims of an honour crime as they had disobeyed their husband/father and had left their country without his permission.

Both the Swedish courts and the Court considered that A.A. family’s problems mainly concerned the personal sphere and had been related to financial matters, rather than an honour. The Court therefore considered that there was **no violation of Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment)** by the State.

*Collins and Akaziebie v. Sweden – 2007*

Emily Collins and her child Ashley Akaziebie, both Nigerian nationals, sought asylum in Sweden, claiming that they feared being subjected to female genital mutilation if expelled.

The court found that it is not in dispute that subjecting a woman to female genital mutilation amounts to ill-treatment under Article 3 of the Convention. There would accordingly be a **violation of Article 3** of the Convention if the applicants were expelled to their home country. Nor is it in dispute that women in Nigeria have traditionally been subjected to genital mutilation. However the crucial

issue has been whether the applicant would face real and concrete risk of being subjected to mutilation if expelled. In this case, the application was declared **inadmissible** as legislation criminalizing the practice of FGM had been passed in the region where the applicant came from. Moreover, Ms Collins had gone to a smuggler rather than going to another region (internal flight alternative) where she could have received support from her family or from the father of the child. Her credibility was also questioned but the Court stated that it is often important to give asylum seekers the benefit of the doubt.

#### *Izevbekhai v. Ireland – 2011*

Enitan Pamela Izevbekhai and her two daughters claimed the girls risk female genital mutilation if the family was returned to Nigeria. Their request for asylum was unsuccessful.

The Court found that the mother was an educated professional and her husband and parents were against mutilation. Further, no attempt was made by her or her husband to report the issue to the police, to seek help or to relocate to northern Nigeria, where the rate of mutilation was significantly lower or rare. The Court therefore considered that she and her husband could protect the daughters if returned to Nigeria. The application was declared **inadmissible**.

#### *Omeredo v. Austria – 2011*

Mary Magdalene Omeredo, 30 years old, fled Nigeria to avoid female genital mutilation. Her sister had already died of the consequences of female genital mutilation and she alleged there was a risk villagers would kill her if she refused. Also her mother had told her that she must cooperate. Her request for asylum was unsuccessful.

The Court found that, given her education and working experience as a seamstress, there was reason to believe that she would be able to build up her life in Nigeria without having to rely on her family's support. The application was declared **inadmissible**.

**However, in certain circumstances the social exclusion of women in society exceeds that high threshold.**

#### *N. v. Sweden – 2010*

Ms N., an Afghan national having an extra-marital affair with a man in Sweden, maintained that she risked social exclusion, long imprisonment or even death if returned to Afghanistan. Her applications for asylum were unsuccessful.

The Court noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were

perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that Ms N. had lived in Sweden might well be perceived as her having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband might result in serious life-threatening repercussions. Reports showed that around 80 % of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations on having a personal or professional life, and were doomed to social exclusion. They also often lacked the means for survival if not protected by a male relative. The Court therefore found that, if Ms N. were deported to Afghanistan, Sweden would be in **violation of Article 3 (prohibition of inhuman or degrading treatment or punishment)**.

**Recently, the European Court of Human rights was released from examining trafficking cases further since the Member State granted the applicant residence permit and the victims were no longer subject to expulsion order.**

#### *LR v. the United Kingdom – 2011*

Ms L.R. is an Albanian national who was born in 1980. She was trafficked to the United Kingdom from Italy by an Albanian man who forced her into prostitution in a night club collecting all the money she earned. Finally she escaped and started living in a shelter. She claimed that removing her from the United Kingdom to Albania would expose her to a risk of being treated in servitude.

The court **discontinued the examination** of the case as the applicant had been granted refugee status in the United Kingdom and there was no longer any risk that she and her daughter would be removed to Albania.

**As regards the expulsion of traffickers, the Court added its weight to the seriousness of the offence.**

#### *Kaya v. Germany – 2007*

Mr Erkan Kaya, a Turkish national, was convicted of attempted aggravated trafficking, forcing women to prostitution and violence against women. He was expelled from Germany to Turkey after serving most of his prison sentence.

The court found that his expulsion was proportionate and necessary in a democratic society since he had been sentenced for serious offences. Accordingly, there has been **no violation of Article 8 of the Convention**.

## The UNHCR representation to the European Institutions in Strasbourg

The UNHCR liaison office in Strasbourg was established in 1996 to pursue the goals of the Office of the United Nations High Commissioner for Refugees (HCR) in collaboration with the Council of Europe (CoE) and the European Parliament when it sits in Strasbourg.

The UNHCR in Strasbourg works to ensure that:

- the principal CoE instruments having an impact on the protection of refugees reflect the policies of the UNHCR and help strengthen protection of the persons covered by its mandate.
- the CoE organs supervising respect for human rights incorporate into their work the questions relevant to the UNHCR in Europe, both with regard to general issues and to individual situations.
- circulation of information between the CoE and UNHCR headquarters, as well as with other UNHCR offices in Europe, is guaranteed.

The activities of the UNHCR in Strasbourg are as follows:

- monitoring the case-law of the European Court of Human Rights on behalf of the UNHCR and co-operating with the various CoE organs;
- delivering assistance and advice, both legal and technical, to the UNHCR field offices;
- bringing third-party interventions before the European Court of Human Rights;
- supplying the CoE organs with information on persons covered by the mandate of the UNHCR and on the countries from which they originate;
- attending the meetings, sessions and conferences of the CoE organs; and
- organising seminars in partnership with the CoE and celebrating World Refugee Day.

### Contacts

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# The Parliamentary Network

## “Women Free from Violence”



The Parliamentary Network “Women Free from Violence” is composed of parliamentarians, belonging to delegations of member and observer States with the Parliamentary Assembly, as well as delegations of partners for democracy. It has been active since 2006, when it contributed to the Council of Europe campaign Stop domestic violence against women. The Network has played an indefatigable role in trying to raise legal and policy standards in the area of the prevention of violence against women, the protection of victims and the effective prosecution of the perpetrators. Since 2011, it has set the promotion of the Istanbul Convention as its main objective.



### Secretariat Contact

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