

# **Towards gender sensitive protection in the Common European Asylum System?**

**AMNESTY  
INTERNATIONAL**



**END FGM**  
EUROPEAN CAMPAIGN



# Mission of END FGM European Campaign

- Put female genital mutilation (FGM) on the agenda of the European Union (EU)
- Lobby the EU for adoption of strategy on FGM
- Echo the voices of women affected by the practice



# Developments of standards relative to international protection

## International standards

- Geneva Convention
- CEDAW, CAT, CRC, ECHR, CoE Conventions
- UNHRC guidelines and guidance notes

## EU common standards

- EU Directives (CEAS)
- Institution (EASO)
- Training (EAC)

## National dispositions

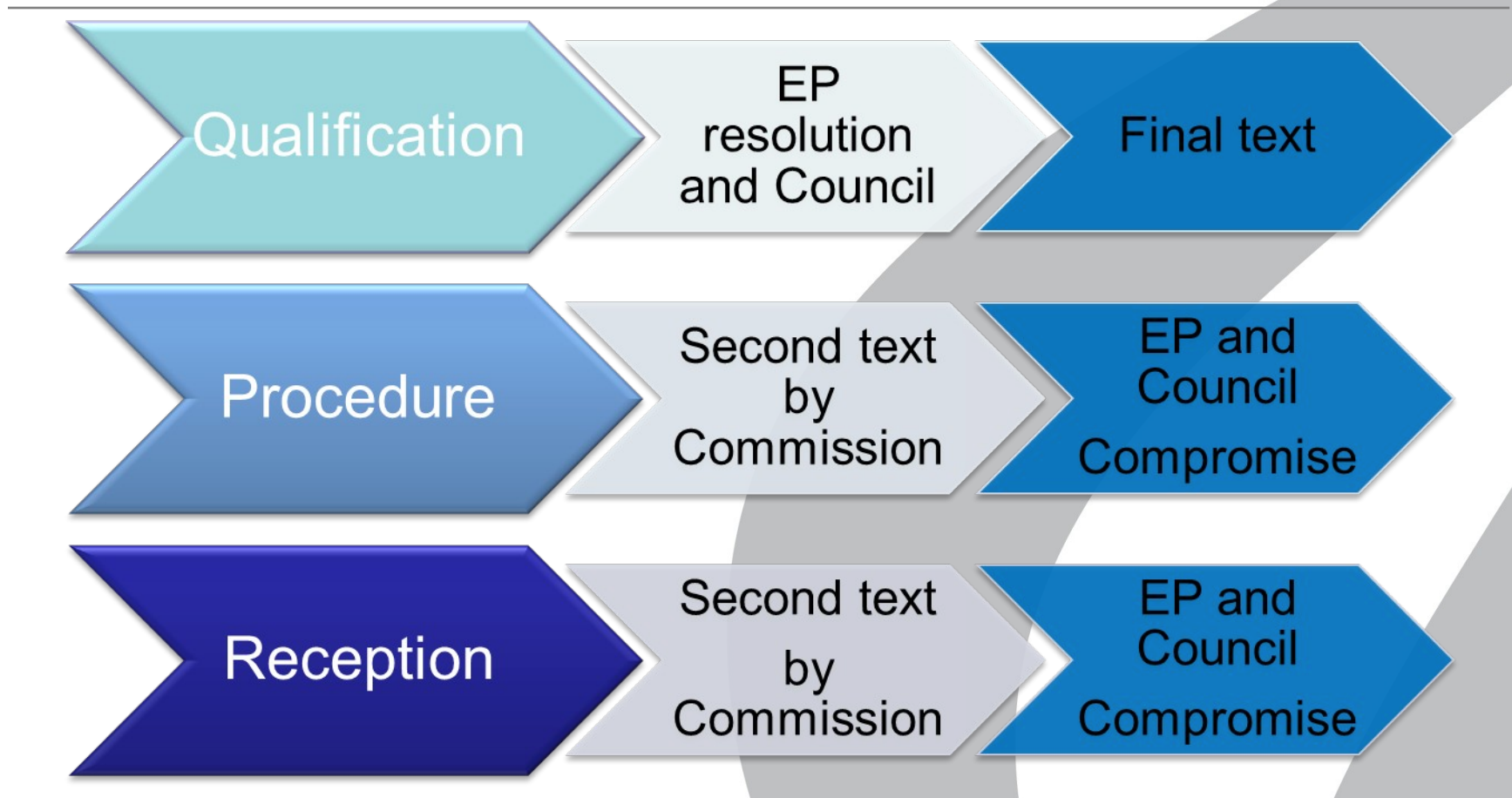
- National law (transposition of EU directives)
- Policies (Gender guidelines)
- Practices (Gender sensitive training)

# Common European Asylum System

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# Current recasting of EU legislation



# Qualification Directive 2004

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- **Age and gender** to be taken on board as personal circumstances in assessment of an application for international protection
  - Article 9 **Acts of persecution** can take the form of:
    - “(a) acts of physical or mental violence, including acts of **sexual violence** [...]
    - (f) acts of a **gender-specific or child-specific nature.**”
  - Article 10 **Reasons for persecution**
    - “Gender related aspects **might be considered**, without by themselves alone creating a presumption for the applicability of this Article.”
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# Qualification Directive 2004 (Continued)

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- **Content of international protection (Article 20)**

In implementation states should take into account the **“specific situation of vulnerable persons** such as **minors**, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to **torture, rape** or other serious forms of psychological, physical or **sexual violence.**”

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# Issues in directive's implementation

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- Restrictive understanding of gender
  - AS do not get access to adequate protection,
  - Decisions are appealed > human and economic costs
  - Distinction between refugee status and subsidiary protection > precarious status
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# Recasting process

- **Commission proposal:**

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- Increased references to gender and child specific persecutions,
  - **EP resolution increased** visibility for HTP and FGM,
    - FGM as a child specific persecution
    - “effects of legal traditions and customs:” risk of genital mutilation, stoning, forced marriages, forced abortion, forced sterilization or honour crimes”
    - These can constitute gender and child-specific persecution(Article 9) and should be considered in the reasons for persecution (Article 10)
    - Specific situation of vulnerable persons (Article 20)
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# Adopted text

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- Compromise text
- Reference to HTP in the recital

“For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example **genital mutilation**, forced **sterilisation**, **forced abortion**, **should be given due consideration** insofar as they are related to the applicant's well-founded fear of persecution.”

- Best interest of the child
  - Broaden definition of gender (Article 10 to include SOGI)
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# Issues with lack of gender sensitive procedure

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## **Identification**

- Gender based persecution not known to fall into international protection grounds by the claimants and the agent.
- Difficulties for claimant in expressing abuse and discrimination, internalisation of violence
- Lack of training and sensitivity of case workers

## **Application**

- Difficulties to provide necessary information
  - Lack of evidence and taboo issues
  - Often statement seen as lacking credibility (crucial facts not mentioned at the first meeting...)
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# Asylum procedures in the EU

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- **Current directive**

- Consideration is given to vulnerability and special needs but no reference to gender and lack of implementation in relation to gender based persecutions.

- **NEW European Commission Proposal**

- Examination procedures should be gender sensitive.
  - Fully integrates the concept of vulnerable asylum seeker (age, gender SOGI) Applicant with specific needs will benefit from specific procedural guarantees (expert and interview)
  - Possibility of separate asylum application for dependants (domestic violence, FGM, forced marriage..)
  - Applicant must be provided sufficient time and support but this is open to interpretation
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# Reception conditions

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- Minimum standards for the reception of asylum-seekers (including housing, education and health)
  - Access to information, healthcare, accommodation, schooling of minors, access to the labour market and to vocational training
  - **Special rules** are laid down for persons with special needs, **minors**, unaccompanied children and **victims of torture**.
  - Rules are also laid down to improve the efficiency of the reception systems in the Member States
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# Issues if gender not taken on board

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- No recognition of traumatisation and symptoms
  - No access to specific health services
  - No adapted accommodation center<sup>2</sup>
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# NEW European Commission Proposal

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- Take into consideration **gender and age specific concerns** and the **situation of vulnerable persons** in relation to applicants within the premises and accommodation centres
  - Measures for prevention of GBV including sexual assault within premises
  - People with specific needs replaced by **vulnerable persons**
  - “vulnerable persons such as **minors**, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, **victims of trafficking**, persons with serious physical illnesses, mental illnesses, or post-traumatic disorders, and persons who have been subjected to **torture, rape or other serious forms of psychological, physical or sexual violence,**”
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# What are the next steps for enhancing the protection?

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- Advocacy work  
( EU directives and EASO)
- Transposition
- Mobilization
- Joined up approach







**END FGM**  
EUROPEAN CAMPAIGN

# Thank you

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En-gendering the European Asylum Support Office  
EU wide coalition

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