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POSITION PAPER:
**INTEGRATING A GENDER PERSPECTIVE INTO THE EU
IMMIGRATION POLICY FRAMEWORK**

INTRODUCTION

In recent years, immigration has become a central theme in the EU political debate. The European Union is beginning to acknowledge that the “zero” immigration policies of the past 30 years are no longer appropriate. Immigration is one of the factors that must be considered in relation to the new demographic and economic challenges which EU is now facing such as skill and labour shortages and ageing population.

Immigrant women face multiple discrimination as women, due to their situation as immigrants and due to the racism that they suffer if they are also a member of an ethnic group. EWL believes that it is fundamental to address this situation and to promote policies that combat the multiple discrimination that immigrant women face within the EU.

Immigration has been included as a strategic priority in recent EU positions on social and employment issues. The Commission has adopted several proposals¹ since 1999, however some Member States are putting up great resistance to the integrating efforts of the Commission and often reduce the immigration framework to simply restricting entry.

As the conclusions of Thessaloniki European Council, June 2003, have shown, Member States efforts in the field of immigration are focused on the development of a common policy on “illegal immigration, external borders, the return of illegal immigrants, cooperation with third countries and asylum”. Such an approach, which is focused narrowly on the need for management of migration flows, often ignore the human rights dimension of immigration.

WHO ARE IMMIGRANTS?

Different groups of immigrants face different realities, are treated differently by the law and have different access to rights and services. It is important to distinguish between the different groups or categories that are considered “immigrants”.

¹ For more information: http://europa.eu.int/comm/justice_home/fsj/immigration/fsj_immigration_intro_en.htm

Asylum seekers: An asylum seeker is a third country national or stateless person who has made an application for asylum, which is a request for international protection provided by the Geneva Convention.

Refugees: A refugee is a person who fulfils the requirements established under the Geneva Convention and therefore has been granted a refugee status.

Subsidiary protection: This is a form of internationally protected status, separate but complementary to refugee status, that is granted to a third country national or stateless person who is not a refugee (i.e. not falling within the categories laid down in the Geneva Convention) but is otherwise in need of international protection for a well-founded fear of being subjected to serious and unjustified harm.

Temporary protection: Several Member States have developed this mechanism to cope with mass movements of people fleeing wars and emergency situations. It includes special provisions to speed up decision-making on temporary admission so as to avoid or defer the application of protracted asylum application procedures.

Undocumented immigrants or irregular immigrants: There are different reasons for immigrants to be in an irregular situation in a host country such as: people who have entered the country without passing through the border controls or with false documents; people who have entered with a tourist visa and have stayed after the visa has expired or former regular workers whose work permit has expired; spouses and children who have no personal right of residence and rejected asylum seekers who do not or cannot return to their countries of origin.

Regular immigrants: Consisting mostly of economic and/or labour immigrants who are legally residing in the host country and holds work and/or resident permits.²

Victims of trafficking: Any person who is subject to trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”³.

In all of these groups or categories there is a strong gender dimension that will be analysed throughout this paper. Even if people from each of these groups face different realities, and different legislation and policies, usually is difficult to differentiate between these groups when analysing the effect that the legislation and policies have on third country nationals who want to enter and live within the EU. One clear example of this is the effects of the entry rules that close down the possibilities of legal immigration and therefore generate “illegality”. Thus, many third country nationals apply for asylum because it is the only possibility they have to enter and stay in a host country.

² Definitions taken from: *Immigration and homelessness in the European Union*. FEANTSA. October 2002

³ Definition taken from: United Nations Convention Against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Dec 2000). For full definition consult Convention’s text.

A GENDER PERSPECTIVE IN IMMIGRATION POLICY

Generally speaking, the gender perspective in EU policies on immigration is absent, this means that the discrimination faced by immigrant women and their specific situation is not being addressed. **By maintaining a “gender neutral” approach to immigration, women’s human rights and the experiences and needs of women are being ignored in the current debates and policies around immigration.** As a consequence, the traditional and patriarchal gendered roles are usually reinforced, and immigrant women are often located within the traditional family roles.

A gender aware approach to immigration policy introduces a shift from the predominant view of female immigrants as simply the wives and children of male immigrants to incorporating an understanding of women’s human rights and of the unique experiences of women immigrants themselves.

STATISTICS

In the year 2000, the annual net immigration rate was 2.0 per 1000 population, representing around 65% of total population growth. Without this positive net immigration rate the population of Germany, Greece, Italy and Sweden would be in decline. Around 45% of immigrants were women, though women, on average, accounted for almost 50% of those moving into countries other than Germany, where women represented only just over 40% of the total. For women, the differences in employment rates are pronounced. Whereas 68% of women nationals in the Union aged 25 to 39 were employed in the year 2000, the figure for non-EU women nationals is only around 44%. At the same time, the unemployment rate for the latter averaged 19% as opposed to 10% for nationals.⁴

Women migrate for a whole range of reasons such as poverty, displacement from the land, debt and many other external factors over which they have little control. In addition, gender roles and practices are an integral part of all social structures and impact upon trans-national movements of women in all three stages of the migration process:

- The pre-migration stage,
- The transition across state boundaries,
- The experiences of migrants in the receiving country.

At the **Pre-Migration Stage**, many factors exist that shape the decision to migrate and make migration more or less possible for women at both the macro level of economic stability and at the micro level of family and individual experiences. Family context in particular defines and assigns the roles of women, which determine their relative motivation and incentive to migrate, and controls the distribution of resources and access to information that can support, discourage, or prevent migration.

At the migration stage of the **Transition Across State Boundaries**, it is important to understand that a decision to leave is not the same as being allowed to exit or to enter a specific country. Through their policies, nation-states, both sending and receiving, are major actors in shaping the gendered nature of the international migration process.

⁴ Statistics taken from: *Population and Social Conditions*. Theme 3 – 2/2003. Eurostat.

Gender plays an important role also at **the Post-Migration Stage**. Men and women most often are treated differently and experience resettlement differently once in a receiving country. Integration outcomes are primarily influenced by three factors:

- the impact of entry status – dependent/independent;
- patterns of incorporation into the labour market;
- the impact of migration on the status of women and men in the host country.

Gendered labour market in receiving countries

Cultural and political mechanisms relegate women to providing care services to the family or to certain sectors of low waged and low skill labour. **Women are also greatly dependent on work in the informal and unregulated labour sectors.** This means that women are working without rights and protection and sometimes their work is not even recognised.

THE EFFECTS OF EU AND MEMBER STATES' IMMIGRATION POLICIES ON IMMIGRANT WOMEN

As it has been mentioned above, immigration has been included in recent EU documents on social and employment issues. However, the measures to promote the integration of immigrants are still quite weak, they are limited to “third country nationals legally residing in the territory of the European Union” and they don’t include a gender equality perspective. This means, on the one hand, that the situation of immigrant women has not been taken into consideration and, on the other, that the few benefits and rights derived from the EU policies on integration and immigration won’t be applied to undocumented women and men. The EU policies addressing undocumented immigrant women and men are mainly focused on combating “illegal immigration” and returning “illegal migrants” to their country of origin.

The need to address the situation of undocumented immigrant women and the effects of the labour market gender segregation on immigrant women

The number of undocumented immigrant women and men is growing in Europe. As a result, a large number of immigrant women and men are living and working within the European Union without any kind of protection, with very limited access to rights and services, with no opportunity to work outside the unregulated labour market and are working on the so-called “three D” jobs: dirty, degrading and dangerous.

The EU has openly expressed its commitment to combat undeclared work, however the EU policies and measures to combat undeclared work do not address the issue of undocumented immigrant and therefore do not propose any solution to this situation. In addition, many States are informally tolerating irregular immigration while they officially reinforce controls against “illegal” immigrant workers. *The effects are, on the one hand, a continued supply of cheap labour, while on the other hand, “illegal” migrants unable to organize in the workplace to defend their dignity and decent work conditions, stigmatised and isolated as well from allies and support.⁵*

⁵ Patri A. Taran (ILO) : “Globalisation, Migration and Exploitation: Irregular Migrants and Fundamental Rights at Work”. Paper presented at the *International Conference on Undocumented*

This situation affects many immigrant women due to the fact that a significant number of them are undocumented and work in the informal economy. Different cultural and political mechanisms in each stage of the immigration process relegate women to certain economical sector such as agriculture and domestic work and to the informal and unregulated labour market. The labour market gender segregation in receiving countries and the existing legal channels of immigration that offer opportunities in typically male-dominates sectors are two examples of these mechanisms.

Immigrant women working in care and domestic services

The increasing demand for immigrant domestic workers has a direct link with the gendered factors that influence the immigration process and with the lack of effective measures and policies promoting the reconciliation of work and family life in the EU. The intersection of demographic factors, such as the aging population, the changes in family structures and the increase of women participation in the labour market, has increased the demand of the unpaid/low paid and undervalued domestic work that women are expected to fulfil. The States do not recognize either the social value of the domestic work nor their responsibility to provide services to combine work and family life. In addition, an equal sharing of care and household responsibilities between men and women is not actively promoted. In this patriarchal context, many European families consider the undeclared and low pay domestic work that immigrant women are carrying out as a “solution” to balance their work and home life. This reality leaves many immigrant women in a very vulnerable and insecure situation, which also sometimes, exposes them to physical and physiological abuse besides economic exploitation.

Trafficking and sexual exploitation of immigrant women

Another phenomenon that increases the vulnerability of immigrant women, is the impact that the EU policies on border control and on combating illegal immigration and the gender-selective immigration policies/regulations have on the issue of trafficking in human beings and especially on trafficking in women. Even if the EU has openly expressed its commitment to combat trafficking in human beings, the structural causes and potential remedies have not been tackled. The international labour market disparities, decent work deficits in many countries, violence against women, growing demands for cheap labour and armed conflicts and wars must be addressed.

This situation has a significant impact on immigrant women. Trafficking in women has increased in Europe, especially trafficking in women for sexual exploitation. As a result of the process of globalisation women, sexuality, and sexual services are considered as goods to trade and marketable. Male demand for buying women's bodies, and especially for 'variety of bodies' in Western Europe is also an absolute determining pull factor that increases trafficking in women and children. Moreover, the closing of borders and the restrictive migration policies increase the profits for traffickers.

The liberalisation of trade and free market policies has undoubtedly contributed to the feminisation of poverty, the consequent limitations in life-choices for women plus the discrimination that women suffer in the migration process, exposes them to worse forms of abuse and exploitation.

ASYLUM SEEKERS

The framework for asylum originates from the 1951 United Nations Geneva Convention (herein referred to as the Convention) on the Status of Refugees, which provides the legal basis for granting asylum and has been ratified by the current 15 Member States of the EU. The five reasons enumerated in the Convention for granting asylum, namely: political opinions, religion, race, nationality and membership of a particular social group, are not systematically assessed to determine women's experience of persecution which can be different to that of men. Therefore, within the framework of harmonisation of EU policies in the area of asylum, it is timely and necessary to ensure there is a gender-sensitive European Policy on Asylum, in which women can claim asylum in their own right, based on their own experience of persecution as legitimate reasons for seeking and obtaining asylum in any of the EU Member States.

Women's experience of persecution is often accentuated by a lack of state protection and in some instances is carried out by state agents and/or those associated with the state (for example, rape as a weapon of war). Gender persecution occurs in situations where a woman, actively or passively, resists what she experiences as oppressive norms, customs or laws prescribed or imposed by the regime or the socio-cultural environment in which she lives, and, therefore, is not offered effective state protection because the state is unwilling, unable or is in fact the persecutor.

This issue is of great importance for female asylum seekers since one of the main problems they face in the process of seeking asylum is the difficulty that officials have in linking women's experience of persecution to the provisions of the Geneva Convention. Effective protection depends on women's access to asylum procedures. One of the reasons why women fail to benefit from protection is due to procedural barriers in which decision-makers and interviewers fail to understand that women's experience of persecution constitutes political persecution and can, therefore, be interpreted in the context of the five grounds enumerated in the Geneva Convention. Guidelines to bridge this gap by assisting the procedures for granting women the right to asylum could provide a valuable tool and could be evaluated over time to determine the effectiveness and the outcomes.

THE POSITION OF THE EWL

The European Women's Lobby is concerned that by maintaining a gender-neutral approach to immigration, women's human rights are not being upheld and the experiences and needs of women are being ignored in the current debates around immigration policy.

In order to ensure the respect for human rights, social and economic benefits and civil liberties the EWL believes that immigration policy must become gender sensitive and

must respect fundamental principles of Human Rights. In this regards the EWL recommends the following:

A gender analysis needs to be incorporated into policy and actions at each stage of the migration process:

- **respect for Women's Human Rights co-operation and development** as the priority in relation to the countries of origin;
- **cross-borderer co-operation** in developing the transition mechanisms and channels;
- **integration** of the migrants within EU.

The framework of immigration policies must respect the following principles:

- Member States must accept their responsibility for the political and economic situation in developing countries and must recognise their implication in the colonization process, wars and economic exploitation of third countries. Within this context, EU policies on immigration must be based on Human **Rights** and not only on EU economic and demographical needs. **Immigrant Women's Rights must be recognized as Human Rights.**
- The **individualisation** of rights and benefits is a core instrument to ensure the equal position of migrant men and women. It is essential that at every stage of the migration process immigrant women obtain rights and entitlements in their own right.

The legal system of entry mechanism must guarantee:

- That the coherent policies and measures **ensure the equal legal status** of immigrants. The legal status of immigrants within the EU must be equal to that of the EU-citizens, regardless of the entry mechanisms through which people enter into the EU and of their legal situation. This legal status must entitle them to core rights such as economic, HR, social and civil rights as well as eligibility to welfare provisions.
- **The legal system of entry mechanisms and integration tools must be based on immigrant needs** and must not be limited to a unique and restrictive ways of entry and staying. Those mechanisms must present a **continuum** enabling immigrants to improve their status in the EU. These flexible mechanisms shall allow a shift from one purpose of staying to another, for example from education to work, and investment into skills and training to higher skilled work or different type of work. Recognition of skills obtained in the country of origin is a prerequisite for the integration of migrant workers into labour market.

The legislation and policies developed in the cross-border co-operation stage must combat:

- The gendered **structural factors and causes of the immigration process that have a direct impact on women's lives** such as the feminisation of poverty, gender based violence in situations of armed conflict and cultural and political mechanism which violate women human rights.

EU integration policies must guarantee:

- While celebrating multiculturalism in Europe and defending the respect of cultures, **religious and cultural customs cannot be used to justify any violation of Women's Fundamental Human Rights.**
- **Support to immigrant women so that they can defend their rights and fight against any discrimination** that they experience within their own families and communities.
- EU institutions must guarantee the **participation of immigrant NGOs, and especially of immigrant women's NGOs**, in the development, follow-up and evaluation of the EU policies on immigration.
- EU policies on immigration must **combat the political and cultural mechanisms that in each stage of the immigration process relegate immigrant women to certain economic sectors/jobs and to the unregulated labour market.**
- EU policies on immigration and integration must **combat the labour market gender discrimination in the receiving countries** and must promote the access to immigrant women to the labour market and to the lifelong learning and training opportunities.
- EU policies to combat undeclared work **must address the issue of undocumented immigrants by providing the right to find a job in the regular labour market and addressing the specific needs and situation of immigrant women.**
- EU policies on immigration and integration must **promote the full participation and integration of immigrant women in social, cultural and civil life.**

EU policies to combat trafficking:

- EU strategies aimed at preventing trafficking in women must **address the root causes and consequences of trafficking** such as the persistence of gender inequalities, the feminisation of poverty, the consequent limitations in life-choices for women, the influence of the mass-media and the expansion of the demand for the sex industry in the receiving countries, and particularly in the European Union. It is fundamental that EU strategies aimed at preventing trafficking in women ensure an effective protection and access to all the means necessary to help them to get out of prostitution.
- Victims of trafficking must **be granted a resident permit** in the country of destination. The right to residence permit must not depend on the willingness of women to stand as witness in legal proceedings against the criminal networks.

EU process of harmonisation asylum policies must adopt:

- The **UN guidelines** on “International Protection – Gender Related Persecution within the context of Article 1A(2)”⁶ to assist officials throughout all of the EU Member States (current and new) in understanding the nature and determining the **legitimacy of asylum claims by women on the basis of gender-based violence.**

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⁶ 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