



**NANSEN - Shadow Report on the implementation of  
Convention on the Elimination of All Forms of  
Discrimination against Women in Belgium**

83<sup>rd</sup> Session: BELGIUM 8<sup>th</sup> periodic report

## Table of contents

INTRODUCTION.....	3
1. DISCRIMINATION, EQUALITY, AND POLICY MEASURES (ARTICLES 1, 2, 3: THE RIGHT TO NON-DISCRIMINATION) – LOI 2: LEGISLATIVE FRAMEWORK .....	4
1.1. <i>Specific procedural needs of persons in vulnerable situations</i> .....	4
1.1.1. SGBV-related applications .....	5
1.1.2. SOGIE-related applications.....	6
1.2. <i>The need for gender-sensitive safe country lists and qualitative COI reports</i> .....	7
1.3. <i>Accelerated border procedures and detention of women and victims of SGBV</i> .....	8
2. ASSESSING THE NEEDS OF VICTIMS OF SGBV IN ASYLUM CLAIMS .....	10
2.1. <i>Forms of SGBV amounting to persecution</i> .....	10
2.1.1. Sexual violence .....	10
2.1.2. Female Genital Mutilation/Cutting .....	11
2.1.3. Honour crimes .....	12
2.1.4. Gang violence .....	13
ANNEXE.....	15

## Introduction

NANSEN is a Belgian NGO developing independent legal expertise on international protection with an interdisciplinary approach. Since 2017, NANSEN has been UNHCR's operational partner for legal assistance to asylum seekers. Since 2020, NANSEN offers dedicated support to victims of sexual and gender-based violence (hereinafter: SGBV) in need of international protection. The recommendations presented stem from our analysis on the structural obstacles to effective access to international protection, our regular monitoring on the detention of asylum seekers, and our individual assistance to persons in need of protection (including stateless persons). In all our activities, we pay particular attention to people in vulnerable situations, including victims of discrimination. This report addresses non-discrimination and gender equality in (inter)national refugee law and the specific needs of victims of SGBV in need of international protection.

## 1. DISCRIMINATION, EQUALITY, AND POLICY MEASURES (ARTICLES 1, 2, 3: The right to non-discrimination) – LOI 2: Legislative framework

### 1.1. Specific procedural needs of persons in vulnerable situations

Certain persons, as women and LGBTQIA+ applicants, are rendered particularly vulnerable in the asylum-seeking process. To ensure procedural equality, the framework of the EU asylum system foresees specific rights and guarantees.<sup>1</sup> Accordingly, Belgian authorities must evaluate whether an asylum seeker requires special procedural guarantees.<sup>2</sup>

In Belgium, Article 48/9 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (hereinafter: Immigration Law) creates the legal framework for "special procedural needs". To detect vulnerabilities, Belgian asylum instances use a "special procedural needs" questionnaire. However, NANSEN finds the questions asked are too general. For concrete cases in which victims of torture were not identified by means of the questionnaire, see: NANSEN [Vulnerability in detention: Special procedural needs](#).

In addition, NANSEN notes that the questionnaire relies on the idea that the asylum seeker is responsible for providing the necessary elements. This is contrary to the EU Procedures Directive which states that it is up to the asylum authorities to identify persons with special procedural needs.<sup>3</sup> The Belgian legislation is insufficiently clear on that point.

Moreover, according to Belgian asylum instances, special procedural needs solely concern procedural accommodations and not the assessment of the content of the application.<sup>4</sup> Based on its experience in supporting individual files of applicants in a vulnerable situation, NANSEN emphasizes that such a limited fulfilment of special procedural needs is an obstacle to the correct assessment of the need for protection.<sup>5</sup>

#### Recommendations

- Refining the "special procedural needs" questionnaire at the Immigration Office level
- Amending the special procedural needs article of the Immigration Law, namely deleting the sentence: "insofar as these needs have been sufficiently demonstrated".

- Including an intersectional understanding of vulnerability to the concept of procedural needs.

#### *1.1.1. SGBV-related applications*

NANSEN stresses that the potential gendered impacts of the asylum procedure itself must be considered, as clearly stated in the UNHCR Guidelines.<sup>6</sup>

In assessing the credibility of a flight story, it is important to consider that the intensity, timing and traumatising nature of certain experiences can influence the way in which asylum seekers can present their story and how well they can provide precise details.<sup>7</sup> When the applicant's overall credibility is established, the benefit of the doubt should be given for facts claimed but not supported by evidence.<sup>8</sup> This is particularly important given that credibility assessment has an excessively important role in asylum claims in Belgium.<sup>9</sup>

Moreover, gender stereotypes are often internalised by examiners who insufficiently consider the applicant's individual situation or the context of the country of origin. NANSEN urges asylum instances to partake in specialized training on SGBV to avoid common stereotypes, (see Belgian National Action Plan, Axis IV<sup>10</sup> and article 5, a) of the CEDAW Convention itself).

### **Recommendations**

- Aligning Article 48/6 §4 of the Immigration Law i with the wording of article 4.5 of the Qualification Directive, in particular by inserting the principle of benefit of the doubt and by replacing 'general credibility' (e) by 'credibility in general'.
- Considering an obligatory training module on SGBV in the context of procedures for international protection for judges of the Council of Alien Law Litigation.
- Developing a gender-sensitive approach to the procedure for international protection. The disclosure of SGBV should automatically lead to the recognition of adequate special procedural needs, a lowering of the burden of proof and a more flexible credibility assessment.

### *1.1.2. SOGIE-related applications*

Key to the assessment of international protection claims related to sexual orientation, gender identity and gender expression (hereinafter: SOGIE) is the credibility of the SOGIE on the one hand, and persecution on the other.<sup>11</sup> The credibility assessment is extremely sensitive as all SOGIE experiences are unique<sup>12</sup>. Hence, procedural safeguards are to be applied as stated by UNHCR Guidelines.<sup>13</sup>

NANSEN stresses the importance of using self-identification as a starting point, as determining somebody's SOGIE can only be done by individuals themselves.<sup>14</sup> This is also consistent with the Yogyakarta Principles, the jurisprudence of the European Court of Human Rights, and the UNHCR Guidelines.<sup>15 16</sup>

In addition, while a general credibility assessment of the applicant's story is necessary, the relevant question is not whether claimants are 'truly' LGBTQIA+, but only whether they are likely to be persecuted on SOGIE grounds if they were to be returned to their country of origin.<sup>17</sup>

Firstly, this credibility assessment must be free of (Western) stereotypes. It is common that applicants must use the identification terms within the Belgian refugee system (the LGBTQIA+ acronym) in order to be considered credible.<sup>18</sup> This is because Belgian asylum instances remain influenced by Western conceptions of the linear formation of SOGIE.<sup>19</sup>

Secondly, the burden of proof must be fair, as the issues making this process difficult for asylum seekers are many.<sup>20</sup> The burden of proof must be shared and flexible as the applicant's own testimony is the primary and often only source of evidence, especially in the case of persecution by non-state actors.<sup>21</sup> Where there is a lack of country-of-origin information (hereinafter: COI), the decision-maker has to rely on the applicant's statements alone. The benefit of the doubt should be given whenever "the whole is coherent and lived through and not in conflict with the country information".<sup>22</sup>

## **Recommendations**

- Taking self-identification by the applicant as the starting point for the credibility assessment of one's SOGIE, considering psychological and cultural factors and without applying Western stereotypes.
- Prioritising a focus on the feared persecution over verifying the SOGIE. A flexible and shared burden of proof should be applied.
- Starting all assessments of SOGIE-based applications for international protection with an interview at the Office of the Commissioner General for Refugees and Stateless Persons' (hereinafter: CGRS), even in case of multiple or late applications. During the hearing, the special procedural needs of LGBTIQ+ persons must always be taken into account.

## 1.2. The need for gender-sensitive safe country lists and qualitative COI reports

When assessing gender-based asylum claims, Belgian authorities must include a gender perspective in the making of “safe country of origin” lists<sup>23</sup> as well as use qualitative COI.<sup>24</sup> COI in asylum procedures is crucial to contextualize asylum cases and the evidence provided by applicants and to ensure a full understanding of the relevant risks. The CGRS research service CEDOCA collects and analyses COI.<sup>25</sup> NANSEN believes it is critical to sufficiently consider the realities of women and LGBTQIA+ individuals in such reports.

In application of both the Qualification and Procedures Directives, asylum authorities must conduct proper investigations of the asylum claims. To be a reliable basis for such investigations, it is crucial that the COI meets certain quality standards. NANSEN notes the absence of any quality standards for COI in the Immigration Law, nor any other Belgian legal rule.<sup>26</sup> Furthermore, Article 10 of the Procedures Directive has not been transposed into Belgian law, contrary to what is required by Article 51 of the same Directive. This article provides for the obligation to collect up-to-date and accurate COI, from different sources.<sup>27</sup> For examples of individual cases in which poor-quality COI reports were used to deny international protection, see NANSEN, [Quality standards of COI in the case of LGBTIQ+ Jordan](#) and [Analysis of country information on the individual file of X](#).

### Recommendations

- Paying attention to the gender dimension when establishing the list of "safe countries of origin", following the Belgian National Action Plan, Axis VI
- Transposing the full Article 10 of the Procedure Directive into Belgian law.

- Including quality standards in the Belgian legislation allowing users of COI to assess their quality and evidential value. Information must be gathered from different types of sources in accordance with Article 10(3)(b) of the Revised Asylum Procedure Directive and relevant ECtHR case law, not be of a general nature, be sufficiently up to date, and come from sources such as UN organizations and NGOs.
- Introducing a legal provision that provides for the publication of all COI Focus of CEDOCA.

### **1.3. Accelerated border procedures and detention of women and victims of SGBV**

Pursuant to Article 43 of the Procedure Directive (article 57/6/4 of the Immigration Law), State Parties can introduce an asylum procedure at the border.<sup>28</sup> The Belgian border procedure requires asylum instances to take a decision within four weeks of receiving the application. In certain situations, an accelerated procedure sets a limit of fifteen days. In any case, NANSEN recalls that Articles 8 and 9 of the Reception Directive provide that the detention of applicants for international protection must remain the exception, and must be as short as possible, which is incompatible with a prolongation of the detention beyond the legal time limit of four weeks if asylum instances are unable to decide on the application.

This border procedure is not applicable to vulnerable applicants with special procedural needs (Article 48/9, §5 Immigration Law). This provision refers, in particular but not exclusively, to victims of torture, rape or other serious forms of psychological, physical or sexual violence.<sup>29</sup> Several bodies hence recommended that applications related to gender<sup>30</sup>, sexual orientation<sup>31</sup>, or applications by victims of trafficking in human beings<sup>32</sup> should not be processed under an accelerated procedure.

However, in recent years NANSEN has continuously visited Caricole and other centers where most of the people applying for international protection at the border are detained. This monitoring reveals that in many situations, the CGRS's finding of special procedural needs on the part of the applicant did not prevent the application of the border procedure nor the accelerated procedure.<sup>33</sup>

NANSEN sees the very application of the border procedure as problematic for vulnerable profiles such as women and LGBTQIA+ applicants for many reasons:

- detention and the shortening of time limits exacerbate the vulnerability of the applicant for international protection,
- the very short time limits make it difficult to prepare for the personal interview,
- it is more difficult to identify victims of torture or applicants who have suffered trauma and any special procedural needs (which may hamper the application of the procedure at the border),
- the very short deadlines and the detention itself make it difficult to obtain documents, especially medical ones which are crucial to establishing torture or violence wounds.

An insufficiently prepared hearing and failure to detect trauma or to identify special procedural needs can have a crucial impact on applicants' ability to tell their story, and thus on the outcome of their application for international protection.<sup>34</sup>

Furthermore, the provisions of the Immigration Law do not provide for the possibility of appeal against the decision to process an application for international protection at the border, or under an accelerated procedure. In the Samba DIOUF judgment, the CJEU confirmed that an appeal should be made possible against such border procedure decisions.<sup>35</sup>

Finally, in 2022, the UN Committee Against Torture explicitly condemned Belgium for its detention practices of asylum seekers.<sup>36</sup>

As a result, NANSEN considers that the border and accelerated procedures do not take sufficiently into account the needs of vulnerable profiles such as victims of torture and LGBTQIA+ applicants and that detention in fact exacerbates their vulnerabilities.

## Recommendations

- Achieve a full transposition of Article 8 of the Reception Directive in Article 74/5 of the Immigration Law by adding the words "when, on the basis of an individual assessment, it proves necessary, and no other less coercive measures can be applied effectively".
- Set a priority to research and implement alternatives to detention of persons in vulnerable situations as detention exacerbates vulnerabilities. Revise Article 48/9 §5 Immigration Law : accelerated or border procedure are not applied in case an applicant has special procedural needs because he or she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence.

## 2. ASSESSING THE NEEDS OF VICTIMS OF SGBV IN ASYLUM CLAIMS

Pursuant to CEDAW's General Recommendation 35, the Convention also covers SGBV.<sup>37</sup> Accordingly, it covers rights under the Istanbul Convention which was signed and ratified by Belgium and requires states and their asylum authorities to adopt a gender-sensitive approach when dealing with international protection claims due to gender or sexual-based violence.<sup>38</sup>

### 2.1. Forms of SGBV amounting to persecution

Acts of persecution "may take the form, inter alia, of a) acts of physical or mental violence, including sexual violence; f) acts of a gender-specific nature." (Article 48/3 §2(f) of the Immigration Law). Article 60 of the Istanbul Convention also states that SGBV is a legitimate ground for international protection, as did <sup>39</sup>.

#### 2.1.1. *Sexual violence*

Sexual violence is defined under article 36 of the Istanbul Convention. Victims of rape or other serious forms of sexual violence are among those in vulnerable situations within the meaning of Article 21 of the Reception Directive who should benefit from special procedural needs in the processing of their application. However, as mentioned above, Belgian law wrongfully places the burden of proof of special procedural needs on the applicant and limits the scope of such needs to the procedural aspects when it should encompass the credibility assessment.<sup>40</sup> Sexual violence also is undoubtedly traumatic, causing severe physical and psychological consequences for the person who has suffered it.

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has emphasized that although the Belgian asylum instances have produced a brochure specifically for women and girls seeking international protection, it is not available in the registration waiting rooms at the Petit-Château arrival centre.<sup>41</sup> Further, in terms of training, immigration officers follow a two-week awareness-raising programme, including topics such as unaccompanied minors and human trafficking, but not SGBV.<sup>42</sup> Finally, GREVIO strongly

encourages the Belgian authorities to install gender-sensitive reception centre practices, and ('border placement', 'accelerated' and regular) procedures for international protection.<sup>43</sup>

### Recommendations

- Following up on GREVIO's recommendations to develop the measures required for gender-sensitive reception and asylum procedures.
- Automatically recognising adequate special procedural needs after disclosure of SGBV in the procedure for international protection.
- Placing an informative brochure (in several languages) concerning SGBV in waiting rooms and other key locations for applicants to access upon arrival.
- Establishing clear and centralised guidelines to promote a uniform approach to violence against women.

#### 2.1.2. *Female Genital Mutilation/Cutting*

Female genital mutilation/cutting (hereinafter referred to as: FGM/C) is a form of SGBV, as well as an act of torture and persecution, as mentioned in the NANSEN Profile 1-2012<sup>44</sup> and confirmed by UNHCR.<sup>45</sup> Yet, NANSEN experiences that victims still face several structural obstacles in the obtention of international protection.<sup>46</sup>

NANSEN also analyzed recent case-law showing that the assessment of applications for international protection related to FGM/C remains a predominantly case-by-case process. Some judges are more reluctant than others to accept the reality of the risk of re-excision of women who have undergone type III genital mutilation or the permanent consequences of FGM/C to reverse the burden of proof. Regarding the consideration of medical certificates, the case law also takes different directions. Our case law analysis shows that Belgian asylum authorities can be reluctant to find a causal link between the asylum seeker's statements and medical or clinical observations based on a medical certificate. However, the doctor's role under the method of the Istanbul Protocole is precisely to match the medical or clinical observations with the asylum seeker's account.<sup>47</sup> For examples and the entire analysis of the 150 FGM-related judgements, see [NANSEN NOTE 2021-2 Mutilations génitales féminines](#).

## Recommendations

- Following article 10 of the Procedures Directive and setting guidelines for asylum authorities to use expert advice in deciding on applications of victims of FGM/C.
- Ensuring, in line with CEDAW and CAT's case law, that the credibility assessment of applicants for international protection, and torture victims in particular, does not preclude a proper assessment of fear, based on objective and uncontested evidence.
- Taking into account the causal link between the applicant's statements and medical findings established in accordance with the Istanbul Protocol when assessing credibility. At the very least, the asylum authorities should carry out a medical examination if they dispute the conclusions of a medical report showing a reasonable risk that an applicant has been subjected to torture or inhuman or degrading treatment.

### 2.1.3. *Honour crimes*

The threat of being subjected to honour crimes can also form the basis for an asylum claim. Pursuant to NANSEN's analysis of individual cases, persons who have violated socio-cultural norms in their countries of origin risk being persecuted in the sense of the UN Refugee Convention. They will face persecution from both non-state actors, mainly their family members, and from the state itself. Certain societies do not allow free experience of particular sexualities and any socio-cultural transgression is seen as an attack on the honour of the family. Honour crimes to 'restore' this transgression are common and are often life-threatening for the transgressing actors. Problematically, there is insufficient state protection against these forms of honour crimes. For example, flight alternatives and shelters are often severely lacking or unsafe. NANSEN highlights the risk of direct persecution by the state, because acts such as adultery are punishable under certain criminal law systems, extreme prison sentences are common, and persons are at risk of torture and inhumane treatment when serving these sentences. NANSEN stresses the secondary consequences of the transgression of socio-cultural norms: in many patriarchal societies survival is based on good community ties.

Finally, NANSEN notes that it is often very difficult to prove honour-related persecution. Little or no individualized evidence is available because the acts of persecution are often embedded in (often patriarchal) social norms and habits in general. NANSEN points out that persecution within the

meaning of the UN Refugee Convention refers to potential persecution that is reasonably likely to occur in the future. Evidence of past persecution may even contribute to a reversal of the burden of proof. Moreover, persecution often will not be limited to specific acts, but can consist of several elements cumulatively amounting to persecution.

#### **Recommendation**

- Avoid returning persons at risk of honour crimes to their country of origin because they have an objective fear of persecution within the meaning of the UN Refugee Convention.

#### *2.1.4. Gang violence*

Threats and acts of SGBV committed by gangs remain pervasive in all countries of the world, with high levels of impunity.<sup>48</sup> NANSEN intervened in individual cases of women fleeing Central America due to gang violence. NANSEN follows the position of the UNHCR (Guidance Note on Refugee Claims Relating to Victims of Organized Gangs).<sup>49</sup>

NANSEN notes that a number of refugee law principles are incorrectly applied or wrongly interpreted by the Belgian asylum authorities in procedures of victims of gang violence, in particular in the case of female victims. NANSEN indicates for example that: insufficient weight is given to the personal circumstances of the asylum seeker or applications are rejected without a proper assessment of the risks upon return. However, it is inherent in refugee law that the assessment of the well-founded fear is forward-looking and therefore somewhat speculative. The fear of persecution does not need to be established with certainty, the reasonable likelihood that a person will be subject to persecution in the future is sufficient for recognition of international protection.

#### **Recommendations**

- Taking into account the individual circumstances of a person when assessing the need for protection, without requiring proof that the person has been or will be individually targeted.
- Acknowledging a decisive role to the risk profile of an applicant and the related COI in the assessment of the need for protection, in particular in the case of women and girls.



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<sup>1</sup> Nansen, Vulnérabilités en détention et accès à la protection internationale : Rapport (2019-2020), Chapitre 3 : Besoins procéduraux spéciaux, p. 5, available at : [https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def\\_clean.pdf](https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def_clean.pdf)

<sup>2</sup> Article 24 European Union Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, available at: <https://www.refworld.org/docid/51d29b224.html>

<sup>3</sup> Article 29 Ibid.

<sup>4</sup> <https://www.cgvs.be/nl/asiel/bijzondere-procedurele-noden> accessed 23rd June 2022; For examples of individual cases in which this limited interpretation of special procedural needs is used, see NANSEN, Vulnerability in detention: Special procedural needs, p. 3-4. Available at : [https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Kwetsbaarheid-in-detentie-III.-Bijzondere-procedurele-noden-def\\_clean.pdf](https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Kwetsbaarheid-in-detentie-III.-Bijzondere-procedurele-noden-def_clean.pdf)

<sup>5</sup> NANSEN, Vers un Code de la Migration ? Contribution à la réflexion, Vulnérabilité et besoins procéduraux spéciaux, p.5, available at: <https://nansen-refugee.be/wp-content/uploads/2021/09/5.-Bijzondere-procedurele-noden.pdf>

<sup>6</sup> UNHCR, Guidelines on International Protection: Gender-Related Persecution in the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UNHCR/GIP/02/01 Rev, 8 July 2008, §38, viii, <https://www.unhcr.org/fr/publications/legal/4ad2f7f61d/principes-directeurs-protection-internationale-no-1-persecution-liee-genre.html>

<sup>7</sup> Accordingly, the inability to recall dates or small details, minor contradictions, and evasive or incorrect statements that do not go to the heart of the matter, should not be considered decisive factors in the credibility of the claimant. See UN High Commissioner for Refugees (UNHCR), Note by the Office of the United Nations High Commissioner for Refugees on the assessment of women's asylum claims, 14 December 2012, p. 2, available at: <https://www.refworld.org/docid/50dc23802.html>

<sup>88</sup> UNHCR, Interpretation of Article 1 of the 1951 Convention relating to the Status of Refugees, April 2001, §10, <http://www.unhcr.org/refworld/docid/3b20a3914.html> ; UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, December 2011, HCR/1P/4FRE/REV.3, §199-201, <http://www.unhcr.org/refworld/docid/4fc5db782.html>

<sup>9</sup> See NANSEN Note 2018/03, Évaluation de la preuve en matière d'asile : l'actualité depuis l'arrêt Singh et autres c. Belgique, available at : <https://nansen-refugee.be/wp-content/uploads/2019/01/nansen-note-3-2018-3-procedure-asile-appreciation-preuve.pdf>

<sup>10</sup> Plan d'action national de lutte contre les violences basées sur le genre 2021-2025, AXE VI : Garantir une prise en compte des violences basées sur le genre dans la politique d'asile et de migration, p. 118, available at : <https://sarahschlitz.be/wp-content/uploads/sites/300/2021/11/20211125-PAN-2021-2025-clean-FR.pdf>

<sup>11</sup> Rainbow Welcome, Améliorer l'accueil des demandeur-se-s d'asile LGBTQIA+ en Belgique Procédures en vigueur, obstacles rencontrés et recommandations concrètes, Novembre 2021, p. 15, available at :

[https://www.pourlasolidarite.eu/sites/default/files/publications/files/ameliorer\\_laccueil\\_des\\_demandeurs\\_da\\_sile\\_lgbtqia\\_en\\_belgique.pdf](https://www.pourlasolidarite.eu/sites/default/files/publications/files/ameliorer_laccueil_des_demandeurs_da_sile_lgbtqia_en_belgique.pdf)

<sup>12</sup> Vluchtelingenwerk Vlaanderen, Internationale bescherming van holebi's in België. Aanbevelingen en tips voor een beter verloop van de asielpcedure, januari 2020, p. 23, available at :

[https://vluchtelingenwerk.be/sites/default/files/media/documenten/report510463\\_0\\_0.pdf](https://vluchtelingenwerk.be/sites/default/files/media/documenten/report510463_0_0.pdf)

<sup>13</sup> Namely: ensuring an open and reassuring environment; interviewers and decision makers need to maintain an objective approach so that they do not reach conclusions based on stereotypical, inaccurate or inappropriate perceptions of LGBTI individuals; the interviewer and the interpreter must avoid expressing, whether verbally or through body language, any judgement about the applicant's sexual orientation, gender identity, sexual behaviour or relationship pattern; specialized training on the particular aspects of LGBTI refugee claims; the use of vocabulary that is non-offensive and shows positive disposition towards diversity of sexual orientation and gender identity, particularly in the applicant's own language; specific requests made by applicants in relation to the gender of interviewers or interpreters should be considered

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favourably; and questioning about incidents of sexual violence needs to be conducted with the same sensitivity as in the case of any other sexual assault victims. See UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, §60, HCR/GIP/12/01, available at: <https://www.refworld.org/docid/50348afc2.html>

<sup>14</sup> NANSEN, Beoordeling van de beschermingsnood van Irakese homoseksuele man in het kader van een volgend verzoek, p.21, available at : <https://nansen-refugee.be/wp-content/uploads/2021/09/2021-4-Volgend-verzoek-van-een-Irakese-homoseksuele-man.pdf>

<sup>15</sup> Ibid. ; JANSEN, S., Pride or Shame: Assessing LGBTI Asylum Applications in the Netherlands following the XYZ and ABC Judgments, June 2018, p.123, available at : <https://www.refworld.org/docid/5c6eb3344.html>.

<sup>16</sup> SOGICA, Getting it Right!, 30 recommendations for improving the lives of people claiming asylum on the basis of sexual orientation or gender identity (SOGI) in the UK, available at : <https://www.sogica.org/wp-content/uploads/2020/07/Policy-recommendations-UK-Final-1.pdf>

<sup>17</sup> Ibid.; NANSEN, Kwaliteitsstandaarden van COI in het geval van LGBTIQ+ Jordanië, p.4-5, available at : <https://nansen-refugee.be/wp-content/uploads/2022/03/NANSEN-Profiel-COI-LGBTIQ.pdf>

<sup>18</sup> DHOEST Alexander, Learning to be gay LGBTQ forced migrant identities and narratives in Belgium, Journal of ethnic and migration studies, 2019, p. 5, available at : <https://hdl.handle.net/10067/1479330151162165141>

<sup>19</sup> BERG Laurie Berg, MILLBANK Jenni, Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants, Journal of Refugee Studies, Volume 22, Issue 2, June 2009, p. 3, <https://doi.org/10.1093/jrs/fep010>

<sup>20</sup> Namely, the applicant's reluctance to reveal membership of a stigmatized group ; internalised concealment and avoidance strategies; the difficulty in addressing sexuality because of trauma, shame, depression or memory problems; the difficulty in discussing sexual assault; and problematic assumptions in relation to sexual experiences and the ability of the claimant to discuss those. See DHOEST Alexander, Learning to be gay LGBTQ forced migrant identities and narratives in Belgium, Journal of ethnic and migration studies, 2019, p. 6, available at : <https://hdl.handle.net/10067/1479330151162165141>

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, §64, HCR/GIP/12/01, available at: <https://www.refworld.org/docid/50348afc2.html>

<sup>22</sup> Vluchtelingenwerk Vlaanderen, Internationale bescherming van holebi's in België, January 2021, p. 61, available at : [https://vluchtelingenwerk.be/sites/default/files/media/documenten/report510463\\_0\\_0.pdf](https://vluchtelingenwerk.be/sites/default/files/media/documenten/report510463_0_0.pdf)

<sup>23</sup> Plan d'action national de lutte contre les violences basées sur le genre 2021-2025, AXE VI : Garantir une prise en compte des violences basées sur le genre dans la politique d'asile et de migration, p. 120, available at : <https://sarahschlitz.be/wp-content/uploads/sites/300/2021/11/20211125-PAN-2021-2025-clean-FR.pdf>

<sup>24</sup> NANSEN, Kwaliteitsstandaarden van COI in het geval van LGBTIQ+ Jordanië, p.4-5, available at : <https://nansen-refugee.be/wp-content/uploads/2022/03/NANSEN-Profiel-COI-LGBTIQ.pdf>

<sup>25</sup> NANSEN, Annex 2021/6, Country of Origin Information, p. 3, available at : <https://nansen-refugee.be/wp-content/uploads/2021/09/6.-Country-of-Origine-Information.pdf>

<sup>26</sup> Ibid, p. 4.

<sup>27</sup> Ibid, p.3.

<sup>28</sup> Nansen, Vulnérabilités en détention et accès à la protection internationale : Rapport (2019-2020), Chapitre 3 : Besoins procéduraux spéciaux, p. 6, available at : [https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def\\_clean.pdf](https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def_clean.pdf) ; These issues have already been analysed by NANSEN in NANSEN Note 2018-1, Asylum seekers at the border: border procedure and detention, April 2018, op.cit, p. 3. See also, CLAES, M., Vasthouding van

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personen met een mogelijke nood aan internationale bescherming als uitzonderingsmaatregel na de wet van 21 november 2017, T. Vreemd., 2019, nr.3, pp. 198-200.

<sup>29</sup> Ibid.

<sup>30</sup> CHEIKH ALI Hana, QUERTON Christel and SOULARD Elodie, Gender-related asylum claims in Europe, 2012, p.100, available at : [https://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2012/462481/IPOL-FEMM\\_ET\(2012\)462481\\_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2012/462481/IPOL-FEMM_ET(2012)462481_FR.pdf)

<sup>31</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection nr. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 2012, §59, available at : <https://www.unhcr.org/509136ca9.pdf>

<sup>32</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection: the application of article 1A(2) of the 1951 Convention and/or Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 2006, § 45, available at : <https://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html>

<sup>33</sup> Nansen, Vulnérabilités en détention et accès à la protection internationale : Rapport (2019-2020), Chapitre 3 : Besoins procéduraux spéciaux, p. 5, available at : [https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def\\_clean.pdf](https://nansen-refugee.be/wp-content/uploads/2020/11/3.-Vulnérabilités-en-détention-III.-Besoins-procéduraux-spéciaux-def_clean.pdf)

<sup>34</sup> The impact of the accelerated procedure on the equality of arms and the collection of evidence is recognised by the Belgian Council of Immigration in its constant case law. See, inter alia, CCE No. 204 154 of 22 May 2018.

<sup>35</sup> CJUE, 28 juillet 2011, C-69/10, Samba Diouf, ECLI:EU:C:2011:524, § 31, 36 et 70. See also CLAES, M., Detention of persons who may be in need of international protection as an exceptional measure following the Act of 21 November 2017, p. 199. ; EASO, Analyse juridique. Les procédures d'asile et le principe de non-refoulement, pp. 110-111, <https://easo.europa.eu/sites/default/files/Asylum-Procedures-JA-FR.pdf> ; UNHCR Statement on the right to an effective remedy in relation to accelerated procedures, <https://www.unhcr.org/protection/operations/4deccc639/unhcr-statement-right-effective-remedy-relation-accelerated-asylum-procedures.html>

<sup>36</sup> <https://www.ohchr.org/en/press-releases/2021/07/un-committee-against-torture-publishes-findings-belgium> accessed 23rd June 2022.

<sup>37</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on gender-based violence against women, 14 July 2017, CEDAW/C/GC/35, available at : [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>38</sup> Article 60 & 61 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) 2011 (Council of Europe Treaty Series).

<sup>39</sup> UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution under Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 8 July 2008, §9, available at : <https://www.unhcr.org/fr/publications/legal/4ad2f7f61d/principes-directeurs-protection-internationale-no-1-persecution-liee-genre.html>

<sup>40</sup> NANSEN, Demande de protection internationale d'une femme originaire de République démocratique du Congo victime de violences sexuelles, p.3, available at : <https://nansen-refugee.be/wp-content/uploads/2020/06/NANSEN-Profil-4-20-Demande-de-protection-internationale-dune-femme-originaire-de-la-République-du-Congo-victime-de-violences-sexuelles.pdf>

<sup>41</sup> Groupe d'experts sur la lutte contre la violence à l'égard des femmes et la violence domestique (GREVIO), Rapport d'évaluation (de référence) du GREVIO: Belgique, 2020, §219, available at : <https://rm.coe.int/rapport-du-grevio-sur-la-belgique-/16809f9a2b>

<sup>42</sup> Ibid, §219.

<sup>43</sup> Ibid, §225-227.

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<sup>44</sup> NANSEN, La nécessité d'une protection internationale des femmes somaliennes victimes de mutilations génitales féminines de type III, available at : <https://nansen-refugee.be/wp-content/uploads/2020/03/NANSEN-Profiel-1-20-Nood-aan-internationale-bescherming-van-Somalische-vrouwen-slachtoffer-van-VGV-type-III-update.pdf>

<sup>45</sup> UNHCR, Guidance Note on Refugee Claims relating to Female Genital Mutilation, mai 2009, par. 7 ; UNHCR, Guidelines on international protection no. 1 : Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 8 juillet 2008, §9.

<sup>46</sup> To assess this issue, NANSEN undertook an analysis of over 150 judgments of the Conseil du Contentieux des Étrangers (French and Dutch-speaking chambers) over the period 2016-2021. See [https://nansen-refugee.be/wp-content/uploads/2022/06/210826-NANSEN-Note-2021-1-FGM\\_FR-def.pdf](https://nansen-refugee.be/wp-content/uploads/2022/06/210826-NANSEN-Note-2021-1-FGM_FR-def.pdf)

<sup>47</sup> NANSEN, NOTE 2020/1 : Les documents médico-légaux dans la procédure d'asile, p.9, available at : <https://nansen-refugee.be/wp-content/uploads/2021/02/NANSEN-NOTE-2020-01-Documents-médico-légaux-dans-la-procédure-dasile.pdf>

<sup>48</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on gender-based violence against women, 14 July 2017, §6, CEDAW/C/GC/35, available at :

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>49</sup> UN High Commissioner for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, §65, available at : <https://www.refworld.org/docid/4bb21fa02.html>