



Immigration and Asylum Unit – “Green Paper on Asylum”

Directorate General Justice, Freedom and Security

European Commission

B-1049 BRUSSELS

Belgium

Care Full Initiative

C/o Amnesty International

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Amsterdam, 24 August 2007

**Response of the CARE FULL Initiative to
the Green Paper on the future Common European Asylum System,
presented by the Commission of the European Communities 6 June 2007**

Dear Sir, Madam,

The CARE FULL Initiative welcomes the Commission's Green Paper on the future Common European Asylum System published on 6 June 2007. It agrees with the Commission that *'serious inadequacies exist with regard to the definitions and procedures applied by Member States for the identification of more vulnerable asylum seekers and the Member States lack the necessary resources, capacities and expertise to provide an appropriate response to such needs'*. It is encouraged by the Commission's finding that it appears *'necessary to prescribe in more depth and detail the ways in which the special needs of the most vulnerable asylum seekers should be identified and addressed in all stages of the asylum process'*.

The CARE FULL Initiative exists of the undersigned organizations: Amnesty International (Dutch section), Dutch Council for Refugees and Pharos Centre of Knowledge on Refugees and Health. We share the objective to enhance protection for survivors of torture or ill-treatment seeking asylum in EU Member States. Enclosed you will find our book 'CARE FULL, medico-legal reports and the Istanbul

Protocol in asylum procedures' as well as the document 'CARE FULL Principles and Recommendations', to which more than thirty non-governmental organizations have subscribed.¹

Our comments to the Green Paper are focused on questions no 15 (How could the provisions obliging Member States to identify, take into account and respond to the needs of the most vulnerable asylum seekers be improved and become more tailored to their real needs? In what areas should standards be further developed?) and no 16 (What measures should be implemented with a view to increasing national capacities to respond effectively to situations of vulnerability?).

We first like to refer to the above mentioned CARE FULL Principles and Recommendations. This document is the result of an international expert meeting, held last year November in Amsterdam, The Netherlands. During this meeting more than twenty non-governmental organizations from eleven European countries, providing legal and/or medical support to asylum seekers, expressed concern that asylum procedures applied in European countries leave little room for survivors of torture or ill-treatment to be properly heard. They underline that medico-legal reports may help to interpret the history of torture or ill-treatment and identify any barriers impeding the asylum seeker from disclosing a coherent and/or comprehensive account of his or her experiences. However, they find that medico-legal reports are often not (sufficiently) taken into account in asylum procedures².

The subscribing organizations underline the importance of the *Manual on the Effective investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1999), also known as the Istanbul Protocol.³ This Protocol provides a basis and framework for rules on medical examinations and medico-legal reports, to be used not only within criminal procedures but also within asylum procedures.⁴ The medical and legal standards derived from the Protocol should give guidance on the role and use of medico-legal reports within asylum procedures.

Several international bodies, such as the General Assembly of the Council of Europe and the UN Committee against Torture, recognized the vulnerable position of victims of torture and ill-treatment in asylum procedures.

¹ In addition to the ten organizations mentioned in the document, the following organizations subscribe the document: Asociación Comisión Católica Española de Migraciones, Association for Democratic Initiatives, Macedonia, Caritas Luxembourg, Centre for the Care of Survivors of Torture, Ireland, Centrum45, The Netherlands, Comisión Española de Ayuda al Refugiado, Cordelia Foundation for the Rehabilitation of Torture Victims, Hungary, Greek Council for Refugees, International Catholic Migration Commission, Irish Refugee Council, Jesuit Refugee Service (JRS), Medical Rehabilitation Centre for Torture Victims, Greece, Nederlands Juristencomité voor de Mensenrechten, The Netherlands, Portugese Refugee Council, Rehabilitation and Research Centre for Torture Victims (RCT), Denmark, Refugee Legal Centre, UK, Rehabilitation and Research Centre for Torture Victims, Denmark Romanian National Council for Refugees, Vereniging Asieladvocaten en -Juristen Nederland, The Netherlands

² See also M. Wijnkoop 'Country assessments: how do EU Member States deal with medico-legal reports in asylum procedures?' In *CARE FULL. Medico-legal reports and the Istanbul Protocol in asylum procedures*. (2006)

³ The Principles of the Istanbul Protocol have been annexed to the United Nations High Commissioner for Human Rights resolution on torture (2000/43) and the resolution (55/89) of the UN General Assembly.

⁴ 'Medical evaluations of torture may be useful evidence in legal contexts such as: [...] (b) Support of political asylum applications.' Istanbul Protocol, par. 121.

The General Assembly of the Council of Europe acknowledged in Resolution 1471 (2005) that victims of torture and ill-treatment constitute a vulnerable group. The General Assembly invited the governments of the member states of the Council of Europe to ensure that victims of torture and sexual violence be excluded from accelerated procedures due to their vulnerability and the complexity of their cases. It also asked the Member States to ensure that all officials dealing with asylum seekers receive relevant training and access to sources of information and research in order to carry out their work with due consideration to the particular situation of victims of torture and ill-treatment, including victims of sexual or other forms of gender-based violence.

in the conclusions and recommendations on the Netherlands of May 2007 the UN Committee against Torture noted with concern that medical reports are not taken into account on a regular basis in the Dutch asylum procedure and that the application of the Istanbul protocol is not encouraged. The Committee recommends the Netherlands to reconsider its position on the role of medical investigations and integrate medical reports as part of its asylum procedures. The Committee also encourages the application of the Istanbul Protocol in the asylum procedures and to provide training regarding this manual to relevant professionals.

The document CARE FULL Principles and Recommendations contains five basic principles:

1. Medico-legal reports are given due weight in the decision-making process.
2. The Istanbul Protocol provides a basis and a framework for rules on medical examinations and medico-legal reports within the asylum procedure and is used to guide practice.
3. Asylum seekers are given sufficient time and facilities to relate their asylum motives and to support their statements, by - amongst others - a medical examination.
4. Acknowledgement of health problems takes place as early as possible in the asylum procedure.
5. In case of doubt about the mental health of the asylum seeker, an independent mental health expert provides an opinion on the mental health of the asylum seeker and his or her ability to give accurate and coherent statements during the interview. Asylum authorities are trained to recognize the signs of torture or trauma and request medical and/or psychological expertise.

In line with these principles and with regard to questions no (15) and (16) we like to make the following comments:

- (I) States should comply with their obligations regarding the incorporation of EU legislation into national law. They should particularly implement and give effect to
 - article 4(3) of the EU Qualification Directive by acknowledging the importance of medical examination and documentation of torture and ill-treatment within the asylum procedure;
 - article 4(4) of the EU Qualification Directive by stating that previous persecution is an indication of future persecution; article 12 (3) of the EU

Procedures Directive by assessing whether the applicant is unfit or unable to be interviewed

- article 13(3) of the EU Procedures Directive by training asylum authorities on how to interview asylum seekers with psychological problems and on how to recognize trauma, including referral to medical experts and rehabilitation centers for survivors of torture, who can further investigate the asylum seeker's ability to accurately convey his/her past experiences;
- article 17 of the EU Reception Directive by identifying persons with special needs with regard to reception conditions.
- article 20 of the EU Reception Directive by organizing the necessary treatment for persons who have been subjected to torture, rape or other serious acts of violence.

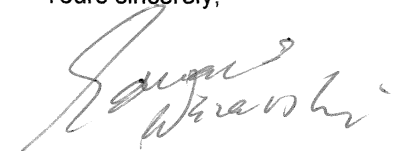
It is of great importance that the European Commission actively monitors and comments on the implementation of EU legislation into national law.

- (II) Further standards should be developed with regard to the role and use of medico-legal reports within the asylum procedure and in accordance with the guidelines laid down in the Istanbul Protocol. To this end, the European Commission could propose an amendment to the EU Directive on Asylum Procedures (ex article 42).
- (III) Member States should not reject asylum applications by survivors of torture or ill-treatment in accelerated procedures, but give them sufficient time and facilities to relate their asylum account and to support their statements by - amongst others - a medical examination. To this end, the European Commission could propose an amendment to the EU Directive on Asylum Procedures (ex article 42).
- (IV) Early identification of survivors of torture or ill-treatment is needed in order to ensure that they receive the appropriate services and treatment, as well as to improve the decision-making process. Asylum authorities need to be trained on how to interview asylum seekers with psychological problems and on how to recognize trauma. They need to be guided by an Interviewing Protocol or Manual.

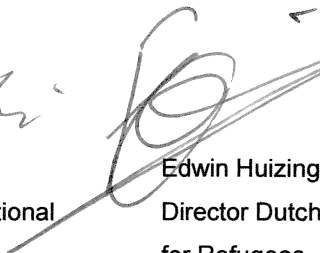
The European Commission should take the lead in developing an interviewing Protocol or Manual, based on the Istanbul Protocol guidelines, and in cooperation with relevant actors in the field. A European Support Office, as mentioned in the Green Paper could develop and/or coordinate training facilities. The European Asylum Curriculum (EAC), as currently created by the Swedish, Dutch, Czech and Spanish Immigration Services, in cooperation with the Odysseus Academic Network, is valuable.

With this reaction we hope to make a contribution to achieve a higher common standard of protection within all EU Member States. We would be happy to explain the Care Full Principles and Recommendations any further at the public hearing on 18 October 2007.

Yours sincerely,



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