Legal strategies to protect sexual and reproductive health and rights in the context of the refugee crisis in Europe: a complaint before the European Ombudsperson

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Abstract: In the context of the refugee crisis in Europe, the measures taken by the institutions and bodies of the European Union as they relate to respecting, protecting, and ensuring human rights have proven to be woefully inadequate. The development of a restrictive, defensive, security-based immigration policy has led to failure by European countries and the European Union to fulfil their human rights obligations. Specifically, the Agreement struck between the European Union and Turkey on 18 March 2016, in addition to externalising borders, placed economic and political considerations centre stage, leading to serious violations of the human rights of refugees and migrants, including their sexual and reproductive rights. In an effort to identify the failures and the institutions responsible for promoting the necessary measures to mitigate the negative impacts these policies have had, the international human rights organisation Women’s Link Worldwide lodged a complaint with the European Ombudsperson. In its complaint, Women’s Link alleges maladministration by the European Commission for its failure to carry out a human rights impact assessment of the 18 March 2016 EU-Turkey Agreement and the reports on its implementation. Such an assessment should include a gender perspective and a children’s rights approach, and its omission is not only a failure to comply with international human rights standards, but also directly and negatively affects women’s and children’s rights. DOI: 10.1080/09688080.2017.1405675

Keywords: human rights standards, sexual and reproductive rights, European Union, refugee crisis, European Ombudsperson

Introduction

The Office of the United Nations High Commissioner for Refugees has reported that in 2015, there were 65.3 million forcibly displaced persons worldwide, due to persecution, conflict, widespread violence, or human rights violations, representing an increase of 5.8 million over the previous year. In the second half of 2015, over a million refugees and migrants (1,015,078) entered Europe by crossing the Aegean Sea from Turkey to Greece. This figure is four times higher than the prior year. Some 84% of these individuals come from the world's top refugee-producing countries, such as Syria, Afghanistan, and Iraq. Of the total, 25% were children, 17% were women, and 58% were men.1,2 Between January and December 2016, another 362,376 people crossed the Mediterranean Sea.3

While a broad range of rights may be negatively affected in contexts of humanitarian crises, sexual and reproductive rights* are among the most frequently violated. Although these rights were not internationally recognised until the 1990s with the Cairo Programme of Action and the Fourth World Conference on Women in Beijing,4,5 they are now fully incorporated into the corpus of human rights and have been widely interpreted by UN and regional human rights bodies, for example, through the development of the rights to life, health, and privacy, to be free from gender-based violence, the right not to be subjected to torture or other cruel, inhuman, or degrading treatment, and the right to equality and non-discrimination.†

*Women’s Link makes a clear distinction between sexual rights and reproductive rights, as sexuality need not be linked to reproduction.
†For example, Universal Declaration of Human Rights (Article 25); Covenant on Economic, Social, and Cultural Rights (Articles...
They are considered fundamental human rights that are essential to the dignity of all persons. They are necessary for the exercise of other rights, as well as for achieving social justice, sustainable, inclusive, and equitable development and more resilient societies.6,7

In accordance with international human rights documents,4,5,7–9 sexual and reproductive health and rights include, at a minimum, the right to make free, autonomous, and responsible decisions about one’s own body, including whether to have children, and if so, when and how many. They also entail the ability to enjoy a fulfilling sex life, to have unimpeded access to sexual and reproductive information, to receive sexuality education, to have access to termination of pregnancy services, and to enjoy the highest possible level of sexual and reproductive healthcare without coercion, violence, or discrimination and in conditions of dignity and equality. In short, sexual and reproductive rights guarantee women and girls the autonomy and freedom to make their own decisions and allow for real, effective access to appropriate sexual and reproductive healthcare services.

It is clear that refugees and migrants are as entitled to these rights as any other population. For example, both the Cairo Programme of Action and the Fourth World Conference on Women specifically addressed sexual and reproductive health and access to services for displaced persons, particularly women.4,5 More recently the United Nations’ 2016 New York Declaration for Refugees and Migrants states that:10

“We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls. We will combat sexual and gender-based violence to the greatest extent possible. We will provide access to sexual and reproductive health-care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls. At the same time, recognizing the significant contribution and leadership of women in refugee and migrant communities, we will work to ensure their full, equal and meaningful participation in the development of local solutions and opportunities. We will take into consideration the different needs, vulnerabilities and capacities of women, girls, boys and men.”

Based on the above-mentioned human rights instruments of hard and soft law, states have a set of obligations and commitments to respect, protect, and guarantee women’s human rights, particularly their sexual and reproductive rights, in accordance with standards established under international human rights law,8,11–14 which remain in place in contexts of conflict and post-conflict.15 They include obligations to provide access to sexual and reproductive healthcare; access to information; psycho-social support; family planning, including emergency contraception; maternity, prenatal, and postnatal care; safe abortion services, including aftercare; and prevention and treatment for sexually transmitted diseases.16

Despite the above, the sexual and reproductive rights of refugees and migrants in Europe have been, and still are, at risk. In general terms, the response to the crisis by European governments and regional institutions has been woefully inadequate17,18 and has failed to provide effective mechanisms to protect the refugees and migrants entering the region. This article reflects on a legal strategy that Women’s Link WorldWide has successfully developed to provide evidence of the failures and their impact on human rights, focusing particularly on sexual and reproductive rights.

EU-Turkey agreement

Women’s Link WorldWide (Women’s Link) is an international human rights organisation that uses the power of the law to promote social change that advances the rights of women and girls, especially those facing multiple forms of discrimination. It has regional offices in Bogotá (Colombia) and Madrid (Spain) and partnerships in East Africa, focusing its work on Latin America, Europe, and Africa. It views the dynamic relationship between the global, regional, and national levels as an opportunity to leverage existing standards to improve the protection for women’s and girls’ rights everywhere.

The organisation considers legal actions and remedies as tools that may be used to strengthen the human rights infrastructure. It creates and promotes legal standards and innovative

10 and 12); Convention on the Elimination of all Forms of Discrimination against Women (Articles 12 and 16); Convention on the Rights of the Child (Article 24); and Convention on the Rights of Persons with Disabilities (Articles 23 and 25).
jurisprudence to defend the rights of women and girls, support the capacity and commitment of human rights advocates, and create conditions for public discourse that will transform societies and create lasting changes.‡

Women’s Link argues that the response of the European Union and its member states to the refugee crisis has been manifestly insufficient, leading to serious human rights violations. Particularly, the organisation challenges one of the measures taken by the European Union to respond to the refugee crisis: the 18 March 2016 signature of an Agreement with Turkey.²⁰ The stated objective of this Agreement is to combat the illegal activities of smugglers, and to offer migrants less risky alternatives. It established, among other measures, that beginning 20 March 2016, new “irregular migrants” who reached the Greek isles from Turkey would be sent back to Turkey.

It is one of many decisions adopted in recent years that collectively contribute to the progressive externalisation of the EU’s borders. The agreement placed economic and geopolitical considerations centre stage, hiding its negative impact on the human rights of refugees and migrants. In this case, the securitisation of borders has gone hand-in-hand with an exchange of external aid in terms of both economic and political support between the European Union and Turkey. For example, a large sum of money has been delivered to Turkey as a compensation for the cooperation, and a promise to Turkey to accelerate the negotiations for accession to the European Union was included in the agreement.§

Even though the Agreement establishes that it will take place in full accordance with European Union and international law and that all migrants will be protected respecting the relevant international standards, it has been sharply criticised by a long list of regional and international bodies and human rights organisations, who have challenged it in terms of validity and viability, affirming that it does not comply with the principles of non-refoulement and “third safe country,” undermining asylum law and violating both EU regulations and the UN Refugee Convention.††

In April 2016, the Council of Europe issued Resolution 2109 (2016), entitled “The situation of refugees and migrants under the EU–Turkey Agreement of 18 March 2016”, in which it had the following to say about the Agreement:²¹

“The Assembly considers that the EU–Turkey Agreement raises several serious human rights issues relating to both its substance and its implementation now and in the future […].”

Amongst other things, this resolution relates to the fact that the Greek asylum system lacks the capacity to ensure timely registration of asylum applications, issuing of first instance decisions or determination of appeals. It also affirms that returns of asylum seekers to Turkey as a “safe third country” are contrary to European Union and international law: because Turkey does not provide protection in accordance with the Refugee Convention, refugees do not have effective access to the asylum procedure.

**According to the Charter of Fundamental Rights of the European Union the principle of non-refoulement means that

“No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (article 19.2); Directive 2013/32/EU of the European Parliament and of the Council defines third safe country as “a country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution […], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.”

†The Women’s Refugee Commission, for example, said that

“While urgent action was needed to better manage the crisis, the Women’s Refugee Commission finds the deal short-sighted, discriminatory and legally dubious, with profound and distressing ramifications for refugees seeking asylum and family reunification in Europe, particularly women and girls: Women’s Refugee Commission.”

EU-Turkey Agreement Failing Refugee Women and Girls. 2015. p. 25.

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¹⁰See, for example, Roa and Klugman.¹⁹

²⁰Point eight of the Agreement states:

“The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015 […]. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States’ positions in accordance with the existing rules.”
The UN Special Rapporteur on the human rights of migrants, too, weighed in on the Agreement during his follow-up visit to Greece.22

“What is missing in this development is a thorough ex ante human rights impact assessment of the EU-Turkey ‘statement,’ which would cover all of its aspects, as well as a clear mechanism for ex post human rights oversight which would extend over several years so as to capture its changing features over time, especially considering the lengthy period it takes for claims of constitutional or EU human rights law violations to go to courts and tribunals […]”

Women’s Link too finds the Agreement to be contrary to the principles and values of the European Union and its member states and to the human rights obligations and commitments that bind them‡‡ and that it disregards the particular protection needs of women and girls. It has had extremely harmful consequences for women and girls in terms of access to asylum; access to healthcare, including sexual and health and rights; and the right to live free of gender violence, among other issues.

For this reason, the complaint seeks to bring to light the failure of the institutions and bodies of the European Union and the European countries to adequately respect, protect, and guarantee human rights in the context of the refugee crisis due to the development of restrictive, defensive, security-based migration policies, and to identify some of the institutions responsible for promoting the necessary measures to mitigate the negative impacts these policies have had.

This article focuses primarily on the allegations in the complaint referring to violations of sexual and reproductive rights.

The complaint before the European Ombudsperson

The complaint was submitted on 21 June 2016, with the European Ombudsperson against the European Commission for maladministration. While it is the Council of the European Union that adopted the Agreement, it falls to the European Commission to coordinate and organise the support structures necessary for its effective implementation, which is why the complaint was lodged against the Commission.

As the Ombudsperson has pointed out, in line with European Union primary law:§§

“[…] good administration means, in the first place, observance of and respect for fundamental rights. In fact, where fundamental rights are not respected, there cannot be good administration. Accordingly, EU institutions and bodies must always consider the compliance of their actions with fundamental rights and the possible impact of their actions on fundamental rights.”***

In that sense, the complaint points to the failure to carry out a human rights impact assessment of the Agreement and the reports on its implementation.23,24 Such an assessment should also include

§§For example, Article 21.1:

“The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.”

Article 21.2.b:

“The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to consolidate and support democracy, the rule of law, human rights and the principles of international law.”

***European Ombudsperson, Decision in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement.

‡‡Article 21 of the Treaty on European Union; the Charter of Fundamental Rights of the European Union; the June 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy; the EU Action Plan on Human Rights and Democracy 2015-2019; the EU Strategies for equality between women and men 2010-2015 and 2016-2019; the EU Guidelines on violence against women and girls and combating all forms of discrimination against them; the EU Guidelines for the promotion and protection of the rights of the child; the Guidelines to EU policy towards non-EU countries on torture and other cruel, inhuman or degrading treatment or punishment; and public international law.
Human rights at risk under the Agreement include the rights to international protection, to live free of violence and discrimination in EU territory, to physical and moral integrity, to live free of torture or inhuman or degrading treatment, to private and family life, to health, to sexual and reproductive healthcare, to dignity, and to live free of slavery and forced servitude.

The differential impacts of humanitarian crises on women and men, as well as the connections with existing inequality and discrimination against women more broadly, must be considered in order to mitigate their effects. Therefore, policies must be designed and implemented with a gender perspective based on human rights, taking into account women’s specific needs and risk factors.

Women’s Link argues that any such consideration must include the intersections between discrimination, sexual and reproductive health and rights, and gender violence. For instance, in the case of the refugee crisis in Europe, discrimination affects the exercise of sexual and reproductive rights; certain violations of these rights constitute forms of gender violence; and gender violence, in turn, constitutes the most extreme form of discrimination.

Furthermore, women’s stories and life experiences are influenced by a long list of factors that intersect and may increase the risks and situations of vulnerability, particularly in contexts of humanitarian crises, including age, socioeconomic status, immigration status, educational level, marital status, nationality, ethnicity, disability, sexuality, or health condition.

As noted above, while it is true that all refugees and migrants are facing serious risks and human rights violations in the context of the current refugee crisis, women and girls have experienced particularly grave conditions because of their gender, not only in destination countries, but in countries of origin and transit as well.

In the case of sexual and reproductive health and rights, these include early pregnancies; forced pregnancies; high-risk pregnancies due to the physical and psychological stresses of forced displacement, which increase risks of complications, premature births, and maternal death; unwanted pregnancies; transmission of HIV and other sexually transmitted infections; rape; sexual harassment; violence by their partners; and forced prostitution, among others.

These risks have been extensively documented by international and non-governmental organisations and have been present along the European migration route, due in part to a lack of specialised care, staff, and resources.

It is apparent that sexual and reproductive healthcare services have been inadequate or entirely lacking. This includes prenatal and post-natal care, family planning, prevention and
treatment for sexually transmitted diseases, care for unwanted pregnancies, and abortion aftercare. The lack of information has made it difficult for women to know where the services were located and if they were entitled to use them.18,25,26

In some cases, when non-food items were distributed to refugee and displaced populations, the specific needs of women and girls were often left unaddressed, and items such as appropriate underwear and feminine hygiene products were not provided. In other cases, these items were provided, but not given out directly, creating obstacles to access when the girls and women who needed them were unaware they were available or were too embarrassed to ask.18

Furthermore, the structure and conditions of housing accommodations available to refugee and displaced populations has increased the risk of gender violence, particularly sexual violence, and of other negative health outcomes. Lodging has often been unisex, without separate spaces for women or even private areas to change clothes. Baths and showers have been located in the same space and used by both women and men, and the resulting fear has limited the freedom of movement of refugee and displaced women. Some women have reported that they went without food or water so they would not have to use these bathroom facilities that they did not consider safe. The conditions of the sites have often been insanitary, increasing the risk of health issues.17,18,25,26

Furthermore, protection for women who suffered or have been at risk of suffering gender violence has been inadequate or nonexistent and there have been difficulties accessing services, when they existed (for example, shelters). Processes for identifying survivors have been inadequate, and there have been no mechanisms in place to prevent and respond to incidences of gender violence in a comprehensive and effective manner. For instance, there has been a lack of legal aid and of safe spaces to carry out interviews with survivors.17,18,25

In addition, adequate measures have not been put in place to overcome gender, language and cultural barriers, creating obstacles to accessing information and thus to identifying and using available services. For example, there has been a shortage of qualified staff and female staff, vital for addressing certain violations of women’s human rights, and a lack of translators.17,18,25

Particularly, the complaint to the Ombudsperson refers to several fact-finding visits that Women’s Link conducted in Greece and Turkey from 23 April to 1 May 2016 and to Greece from 29 May to 6 June 2016.27 It must be taken into account that in the specific case of Greece, once the Agreement came into effect, migrants and refugees were taken to camps restricting their freedom of movement.

Women’s Link found deplorable overcrowded conditions and poor hygiene in the camps of Moria and El Pireo where refugees were housed, the absence/inadequacy of sexual and reproductive healthcare services for women and girls, and the barriers to accessing them. The urgent need for services including prenatal care, particularly for high-risk or life-threatening pregnancies and births, abortion services, gynecological care, and prevention and treatment of sexually transmitted diseases, including HIV, was going largely unaddressed, despite the increased risk that refugee and displaced women faced under those conditions. There was also a lack of translators in these camps, making it difficult for women to communicate and to obtain information about their rights and legal procedures (information was given in Greek and English). Even lawyers had limited access to the camps.

At the same time, the complaint addresses some of the structural issues inside the camps that exacerbated the risks of gender violence, a factor that Women’s Link has documented in the context of this and other humanitarian crises. In El Pireo, women had access to only a few showers, toilets, and portable latrines. The latrines were dirty and many women preferred to go to other spaces but feared to suffer violence there. In this case, Women’s Link argues that the absence of an

111Women’s Link, along with several other organizations, requested precautionary measures from the Inter-American Commission on Human Rights to protect the rights of displaced persons living in camps after the 2010 Haiti earthquake. Measures requested included specific measures to protect women from sexual violence and facilitate access to healthcare services, including emergency contraception. This violence was taking place partly due to the structural conditions of the camps: Inter-American Commission on Human Rights. Precautionary Measures no. MC 340/10: Women and girls victims of sexual violence living in 22 internally displaced persons in Port-au-Prince, Haiti. 2010. http://www.oas.org/en/iachr/decisions/precautionary.asp
impact assessment led to a failure to prevent, investigate, prosecute, or to provide sanctions against or reparation for sexual violence and other forms of gender violence, which were more prevalent because of the structure and conditions of the camps.

These conditions have also increased the risk to women and girls of becoming victims of trafficking in persons. Adequate procedures for identification and protection of victims were not in place, although trafficking is considered a form of gender-based persecution and therefore a valid basis for applying for asylum. In that sense there was no gender perspective in the processing of the asylum claims, while bearing in mind also that asylum system was also facing collapse.

The complaint concludes that the European Commission’s duty of due diligence requires, in accordance with the EU framework, an assessment of the differential, particular, and adverse impact of the humanitarian crisis that takes into account the rights of women and girls. A human rights impact assessment is a key tool to determine whether the policies and actions undertaken by the European Union are leading to human rights violations. Such an assessment could serve as an ongoing monitoring tool for preventing and remediying human rights violations and ensuring non-repetition.

**Decision by the European Ombudsperson**

In response to this complaint and similar complaints filed by other Spanish NGOs and private citizens, the European Ombudsperson opened a joint inquiry into the allegations, contacted the Commission, and after performing an assessment of the responses and comments of the complainants, issued a Decision on 18 January 2017, where it suggested that the Commission include in its reports factors that may be prejudicial to human rights and measures to mitigate their impacts.

The Commission’s arguments in its replies to the complaint focused on two issues. First, it argued that the Agreement was political in nature. According to the Commission, it did not constitute an international agreement, but a political declaration, and, therefore, a human rights impact assessment was not required. Second, it argued that in any case the assessment was reflected in periodic reports on the progress of the Agreement and in a 16 March 2016 Communication on cooperation measures between the European Union and Turkey. It cited a decrease in the number of irregular migrants and asylum seekers entering Europe, as well as financial assistance provided by the European Union to Greece and Turkey, including humanitarian assistance, and attention provided to vulnerable groups.

Regarding the first argument, the Ombudsperson took the following view:

“[…] neither [the Agreement’s] political nature, nor indeed the title “Agreement” or “Statement,” in any way diminish the responsibility of the Commission to ensure that its actions are in compliance with the EU’s fundamental rights commitments. The Ombudsman notes her Office’s longstanding view that good administration means, in the first place, observance of and respect for fundamental rights; where fundamental rights are not respected, there cannot be good administration. Accordingly, for all policies and actions of EU institutions and bodies which impact on human beings, any evaluation should contain an explicit consideration of the human rights impact of those policies and actions. Such impact assessments should have regard to the principle of proportionality.”

While the Ombudsperson did not deny the political dimension of the Agreement in her Decision, she noted that its implementation is carried out through administrative actions, and that in keeping with European law, an impact assessment should be performed, because this implementation impacts the human rights of migrants and the ability of the European Union and Member States to fulfil their human rights obligations.

Turning to the Commission’s second argument, the Ombudsperson cited her own definition of an impact assessment:

“[…] the human rights impact assessment is not a collection of data or a response to public opposition, but rather an analytical tool for demonstrating that all necessary factors and circumstances have been taken into account in framing a policy. The human rights impact assessment tool identifies the sources of risks and the human rights impacts on

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§§§ The Ombudsperson cites the Preamble of the Charter of Fundamental Rights of the European Union and Article 6(3) of the Treaty on European Union.

**** The Ombudsperson first offered this definition in her Decision in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam Free Trade Agreement.
the affected stakeholders at each stage of the project’s life. Its role is preventive in the first place because when negative impacts are identified, either the negotiated provisions need to be modified or mitigating measures have to be decided upon before the agreement is entered into.”

For the Ombudsperson, this tool may be used in advance of an agreement that may have human rights implications, after it has been put into operation, or both. In this case, it was not used prior to entry into the Agreement, and the information included in the Communication and subsequent reports was inadequate, consisting only of general information that did not allow possible adverse impacts to be determined. She therefore opined that the reports could not be considered a “proper substitute for a human rights impact assessment.”

The Ombudsperson went on to say that the assessment should be performed on a continuing basis over the life of the Agreement and should include an analysis of its impact on human rights in light of the obligations set out in the Charter of Fundamental Rights of the European Union and in international human rights law.

She added that any such assessment should provide answers to three questions:

“(i) what is the impact (direct and indirect) of the implementation of the Agreement on the human rights of individuals directly affected by it, particularly of women, children and people with disabilities? (ii) to what extent are the relevant EU agencies and the Member States involved able to fulfil their human rights obligations in the context of the implementation of the Agreement? (iii) what mitigating measures are needed, if any?”

The Ombudsperson concluded that the progress reports on implementation of the Agreement should include a separate section addressing issues potentially affecting human rights, directly or indirectly, as well as measures to minimise negative impacts. This suggestion has not been put into practice by the Commission, which did not include such a section in the report it filed a few weeks after the Ombudsperson’s Decision was issued.

Conclusion
Through this legal strategy, the human rights community was able to defend the need for human rights impact assessments that would evaluate the effects of migration policies on the human rights of women and girls refugees in the current European humanitarian crisis.

By making this recommendation regardless of the nature of a particular policy or action to be undertaken, the Decision allows for a broad interpretation of the human rights obligations of European Union institutions and bodies.

At the same time, it reaffirms that human rights, including sexual and reproductive rights, must be respected regardless of an individual’s migratory status. It reaffirms that the introduction of new migration policies or agreements cannot be an excuse to lower the standards. The Decision highlights that in the absence of such a human rights assessment, the European Union and European countries cannot ensure that they are respecting human rights.

Nevertheless, the Decision also represents some challenges. For example, it refers to human rights in general. This means that there is an ongoing need to reinforce that women’s rights are human rights, that sexual and reproductive rights are human rights, and that they must be guaranteed. In that sense, the work of activists and human rights organisations to raise awareness and to continue denouncing the failures to comply with legal standards is essential. The capacity to work collaboratively both nationally and regionally, establishing also the links between the European and the national policies and responsibilities, is critical.

The Commission has not yet taken concrete steps to fulfil the Decision, creating new challenges and opportunities. Next steps for action and advocacy could include the identification of individual cases of women and girls who have suffered violations of their sexual and reproductive rights, and to litigate them before European and national courts. In this way, the lack of this kind of assessment can be used in future legal or even in non-legal strategies to defend sexual and reproductive rights, as an indicator of malpractice.

Thus, both the complaint and the resulting decision lay the groundwork for ongoing efforts to implement human rights standards in the protection of the rights of migrants and refugees in the wake of humanitarian crisis.
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Résumé

Dans le contexte de la crise des réfugiés en Europe, les mesures prises par les institutions et les organes de l’Union européenne dans le domaine du respect, de la protection et de l’application des droits de l’homme se sont révélées tout à fait insuffisantes. La mise au point d’une politique de l’immigration restrictive, défensive et axée sur la sécurité s’est soldée par l’incapacité des pays européens et de l’Union européenne à s’acquitter de leurs obligations relatives aux droits de l’homme. Plus précisément, l’accord intervenu entre l’Union européenne et la Turquie le 18 mars 2016, en plus d’externaliser les frontières, a placé des considérations politiques et économiques au centre de la scène, donnant lieu à de graves violations des droits de l’homme des réfugiés et des migrants, notamment leurs droits sexuels et génésiques. Désirée de recenser les échecs et les institutions responsables de promouvoir les mesures requises afin d’atténuer les conséquences négatives de ces politiques, l’organisation internationale des droits de l’homme Women’s Link Worldwide a déposé une plainte auprès du Médiateur européen. Dans sa plainte, Women’s Link fait état d’une mauvaise administration de la Commission européenne qui s’est révélée incapable d’évaluer les répercussions sur les droits de l’homme de l’accord du 18 mars 2016 entre l’Union européenne et la Turquie et d’informer sur sa mise en œuvre. Une telle évaluation devrait inclure une perspective sexospécifique et une approche des droits des enfants. Leur absence ne respecte pas les normes internationales des droits de l’homme, mais de plus elle lèse directement les droits des femmes et des enfants.

Resumen

En el contexto de la crisis de refugiados en Europa, se ha comprobado que las medidas adoptadas por las instituciones y los organismos de la Unión Europea con relación al respeto, protección y garantía de los derechos humanos son lamentablemente insuficientes. La formulación de una política de inmigración restrictiva, defensiva y basada en la seguridad, ha llevado al incumplimiento de las obligaciones de derechos humanos por parte de los países europeos y la Unión Europea. En particular, el Acuerdo celebrado entre la Unión Europea y Turquía el 18 de marzo de 2016, además de externalizar las fronteras, situó en el centro intereses económicos y políticos, lo cual produjo graves violaciones de los derechos humanos de las personas refugiadas y migrantes, incluidos sus derechos sexuales y reproductivos. En un esfuerzo por identificar los fracasos y las instituciones responsables de promover las medidas necesarias para mitigar los impactos negativos que estas políticas han tenido, la organización internacional de derechos humanos Women’s Link Worldwide presentó una queja ante la Defensora del Pueblo Europeo. En su queja, Women’s Link alega mala administración por parte de la Comisión Europea por su incumplimiento de realizar una evaluación del impacto que tuvo en los derechos humanos el Acuerdo celebrado el 18 de marzo entre la UE y Turquía, así como de los informes sobre su ejecución. Dicha evaluación debería incluir una perspectiva de género y un enfoque de derechos de infancia, y su omisión no solo representa un incumplimiento de las normas internacionales de derechos humanos, sino que también afecta directa y negativamente los derechos de las mujeres, las niñas y los niños.