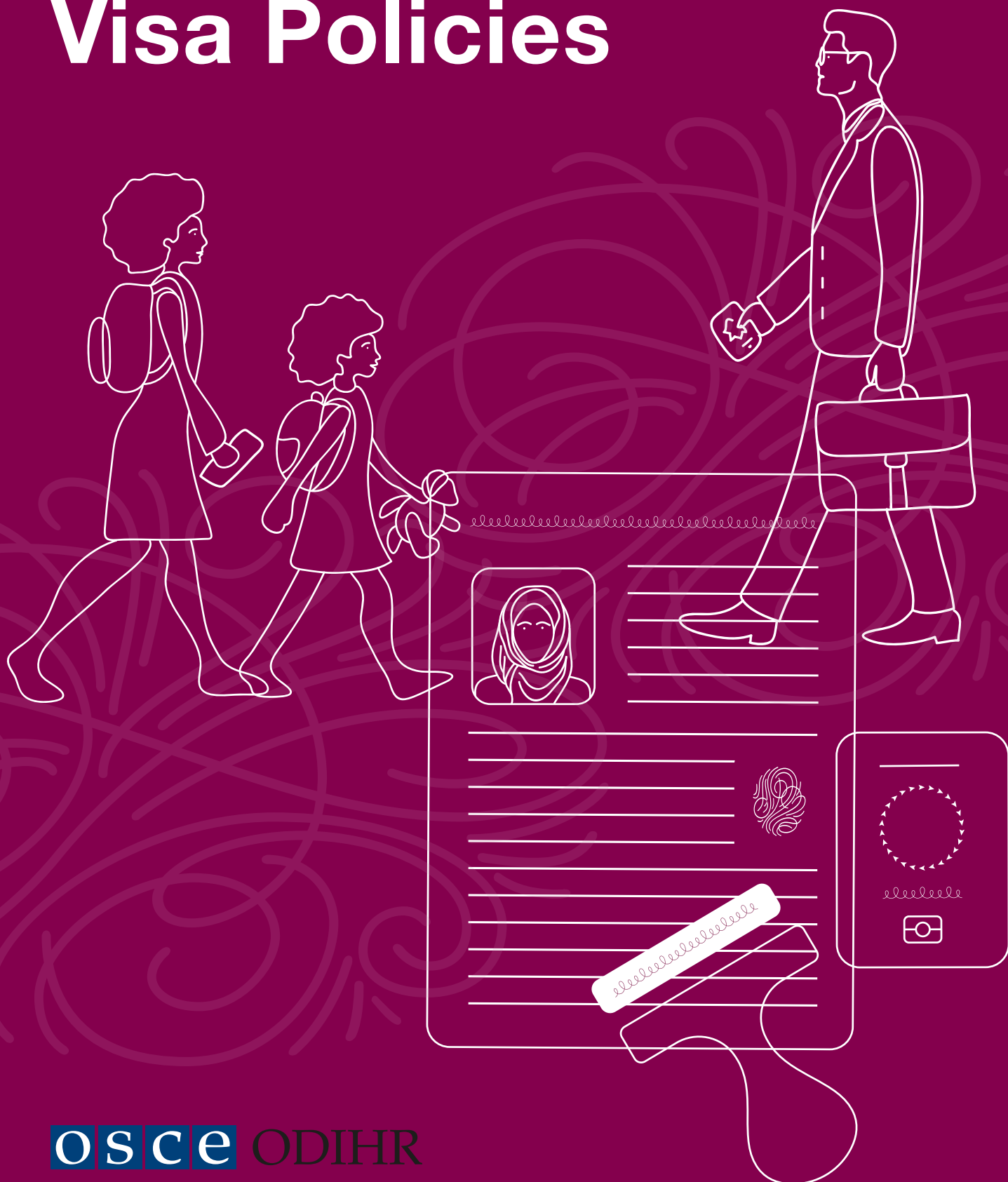
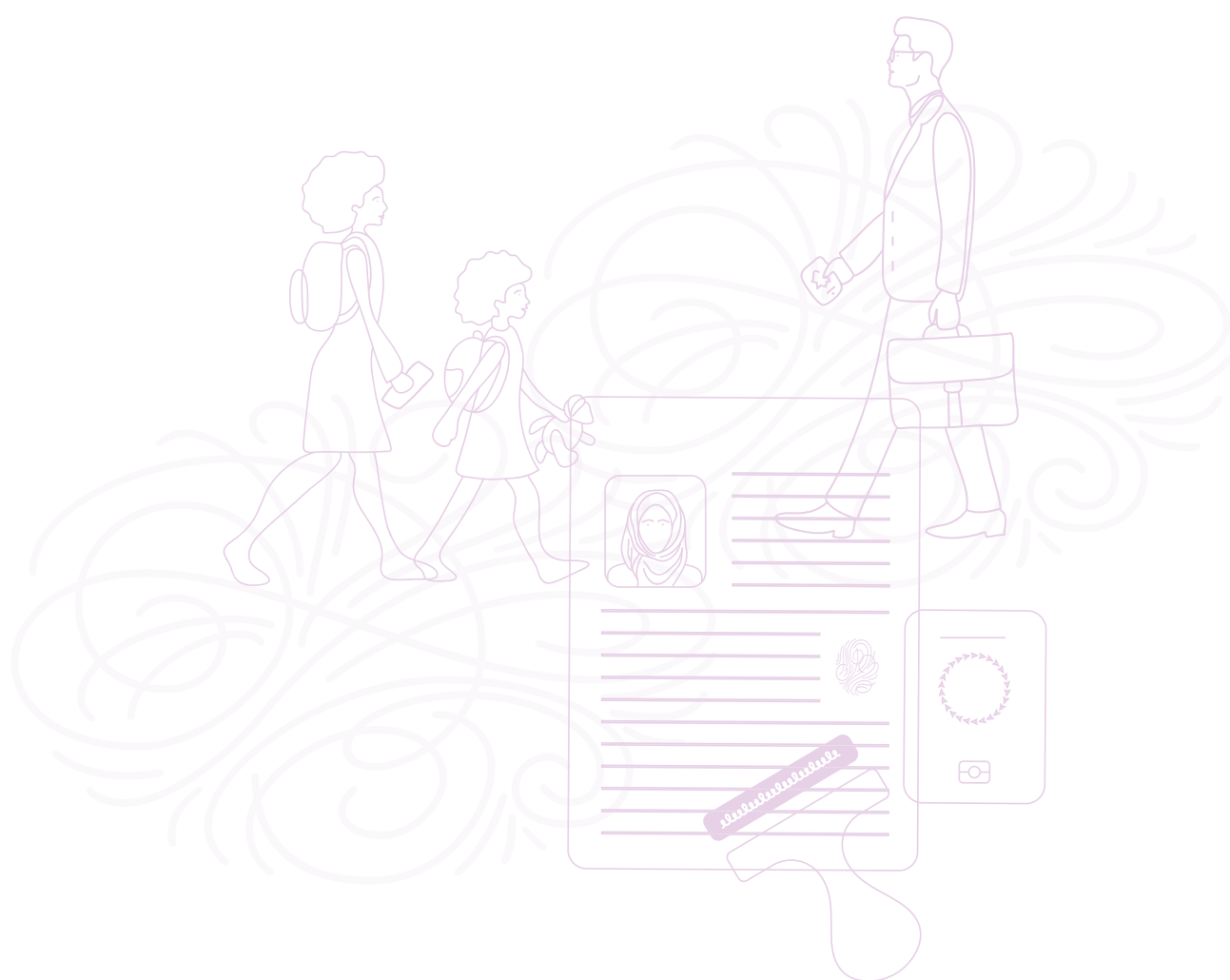


Gender Responsive Short-Term Visa Policies



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Where visa-free regimes between states are not in place, obtaining a short-term visa is essential for a person to cross an international border to visit family and/or friends, as well as to pursue cultural, educational and economic opportunities for short periods of time. Obtaining a visa can also be important for humanitarian purposes, including accessing medical facilities for specialized treatment not available in one's country of residence.

The OSCE Helsinki Final Act, recognized, "the development of 'human contacts' between citizens of participating States," as an important element, "in strengthening friendly relations and trust between people."¹ Participating States, since then have agreed to foster these human contacts by shortening the waiting time for visa decisions and simplifying or reducing administrative requirements for visa applications.

"Full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law."² The OSCE Action Plan for the Promotion of Gender Equality (2004) tasks the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with building local capacity and expertise on gender issues, as well as supporting participating States in complying with international instruments for gender equality. Migration, including of a temporary nature, can increase equal access to education and economic resources, and it can improve one's autonomy and status. The International Organization for Migration (IOM) recognizes that, "a person's sex, gender, gender identity and sexual orientation shape every stage of the migration experience."³ General Recommendation 26 of the Convention on the Elimination of Discrimination against Women (CEDAW),⁴ which most OSCE participating States have ratified,⁵ goes further to advise governments to lift discriminatory bans or restrictions on

women's migration, including permission from their spouse to travel.

While there is no specific right of non-citizens to enter the territory of a state in international human rights law, any measures introduced related to cross-border mobility that may discriminate based on gender or other grounds would not be in line with international standards. The commitments made by OSCE participating States on gender equality include the possibility to travel and to enjoy the rights and economic, social and cultural opportunities that cross-border mobility may enable.

This brief will:

- Provide clarity on situations in which gender may impact the ability to equitably access a short-term visa;
- Assist states in mainstreaming gender into their visa policies to ensure that any potential gender inequalities are eliminated; and
- Highlight good practices and recommend areas for improvement of current policies.⁶

1 Helsinki Final Act, 1975.

2 Moscow Document 1991, paragraph 40.

3 See IOM's webpage on Gender and Migration.

4 See, CEDAW General recommendation No. 26 on women migrant workers.

5 The United States and the Holy See have not ratified the Convention.

6 Both good practices and recommendations derive from analysis of existing policies and good practices in the OSCE area through two studies commissioned by ODIHR on gender sensitive visa policies.

Procedures for obtaining a short-term visa

A visa can be defined as the conditional authorization given by a competent authority of a country, subject to the final approval of border authorities, for a person who is not a citizen of that country to enter its territory and to remain there for a limited duration.⁷ The aim of a short-term visa is ultimately to allow people to visit other countries for a short period of time (usually up to 90 days) and return to their country of origin.

Within the OSCE region, where a visa-free regime is not in place, some individuals will need to obtain a visa in order to travel to other states. Each country has a procedure that applicants need to follow in order to obtain a short-term visa and to cross a given border. While short-term visas are not a 'right' and countries have the right to control entry to their borders, policies should apply equally to all women and men, in all their diversity. The process to obtain a visa is, generally, as follows:

- The applicant informs themselves about the short-term application requirements and supporting documents they need for the country/region (e.g. Schengen) to which they wish to travel, either online, through consular services, or via third parties/agencies;
- The applicant completes the required application forms and collects the necessary paperwork and funds required for the visa application;
- The applicant books an appointment with the consular service for the country/region to which they wish to travel, to submit the application form and the required supporting documents and funds, or completes an online application. In some cases, countries have contracted the collection and screening of required documents to a company specialized in visa processing. In some cases, an

appointment at this stage is not necessary, but applicants can queue at the relevant consular or contracted agency to submit the required documents;

- The applicant may be invited for an interview at the consulate of the country to which they wish to travel, to support their application for the visa through an interview. Sometimes additional information may be requested, including the collection of biometrics;
- The applicant is provided a visa or informed of a negative decision. In case of denial, where appeal procedures exist, the applicant may be informed of the existing procedures; and
- If the applicant receives a visa, it will be checked against various databases at the relevant land or sea border or airport by a border guard.

Assessing gender equality in short-term visa policies

Gender equality means equal rights and opportunities, as well as outcomes for women and men, in all their diversity, in all spheres of life, including access to resources, power, finances and work opportunities, as well as freedom from any form of discrimination or violence.

Because of the differences, or perceived differences, in the roles of men and women, different approaches are often required by states to bring such equality of opportunity and resources. Persistent inequalities impact and limit the realization of human rights and development, as they hinder the rights of a significant part of the population, most often women.

While the intent of a policy may be 'gender-neutral' the actual impact of that policy, including visa and migration-related policies, almost never is. Even when policies and laws do not directly discriminate, they tend to bring disproportionate benefits to women and men

⁷ See ODIHR's Baseline Study on Cross-Border Mobility in the OSCE Region, p.7.

from different groups, in relation to their age, ethnic group, citizenship, location, income levels, religion, social, health, economic status, sexual orientation, gender identity, ability and other criteria. Thus, it is important for policy makers and those implementing policy to understand the different impact of a certain policy on different groups. This can help to prevent direct and/or indirect discrimination.

Participating States should, therefore, consider whether their visa policies may result in direct or indirect discrimination based on gender, in accessing visas. This can be done by examining whether men and women, in all their diversity, are impacted differently during the process of obtaining visas, but also when

presenting their visa at border crossings. Gender analysis of this sort takes into account the possible differences between men and women, boys and girls in accessing visas, as well as enjoying freedom of movement, with the objective of promoting equality between women and men. Gender analysis also relies on the availability of sex-disaggregated statistics.

Participating States should also assess whether sufficient data, including sex-disaggregated data, are available to make diversity-sensitive, gender analysis and gender impact assessments on existing short-term visa policies and impacts.⁸ Equal treatment often requires the introduction of temporary special measures that will bring about equality.

Steps to identify gender aspects of visa policies

Step 1 Examine the intent of the visa policy from a gender perspective.

Q: What is the purpose of a short-term visa policy? Is it to grant permission to a foreigner to travel and enter a country for a prescribed period of time, while maintaining control and information about entrants? Does this policy aim to include all applicants?

Step 2 Identify instances when (universal) rules discriminate against women, men and/or others.

Q: Is there direct discrimination? An example of direct discrimination would be a policy in which unemployed men under 35 are not eligible for a short-term visa.

Q: Is there indirect discrimination? An example of indirect discrimination would be a women who cannot comply with the procedures to obtain a visa because she is unable to prove her financial status, as men control all finances and are holders of bank accounts in her country.

Step 3 Explore the actual effect of visa policies, rules and procedures on the exacerbation of existing gender-based inequalities, or on transformation of stereotypical gender roles and norms.

Q: Does the interviewer's perception of or bias towards the role of women or men affect the opportunity to obtain a short-term visa?

Step 4 Identify room for improvement in advancing gender equality and introduce specific actions and measures, including more available statistics.

Q: Do special requirements need to be introduced to bring about equality? If so, what are they?

⁸ The central question of the gender impact assessment is: Does a law, policy or programme reduce, maintain or increase the gender inequalities between women and men? Please see: Gender impact Assessment, European Institute for Gender Equality.

ODIHR's assessment of short-term visa policies

Research conducted by ODIHR included a gender assessment of OSCE participating States' visa policies. The analysis assessed countries in four different groups due to their common visa policy features.⁹ The gender assessment analysed the gendered impact in every step of the application process described above.

The research aimed to shed light on whether it was more difficult for certain people to obtain a visa as a result of gender, to find promising practices in the OSCE region and to provide recommendations for improvement.

1. Positive examples of gender inclusive practices in the OSCE region

Visa application forms designed and written in gender-inclusive language:

Some languages have both the masculine and feminine forms. When both forms are used, including in translations, a culture of 'equality' is acknowledged and reinforced. This should be the case in all languages, including translations.

- Schengen visa application forms in the English language use gender-balanced language (he/she).¹⁰ Georgia, the Western Balkan countries, Turkey, Turkmenistan and Mongolia use gender-neutral terms in the English language

- and use both the masculine and feminine forms in the language of the country.¹¹

Visa application forms that ensure the freedom to choose gender identity:

This includes the option of "unknown", "other" or unspecified sex in the visa application, which contributes to the inclusion and non-discrimination of transgender, intersex and non-binary people. The choice to self-identify acknowledges a culture of equality.

- Slovakia, Latvia and Canada provide these choices.

Forms that include a non-discriminatory choice for declaring marital/relationship status:

Forms that allow applicants to describe and substantiate their status, including informal and same-sex partnerships, increase the likelihood of accessing a visa, because marital or partnership status is often used to prove family ties in cases of family visits, including those to a same-sex partner.

- The United Kingdom provides the opportunity to declare dissolved partnership, civil partner, unmarried partner or surviving civil partner, widening the scope of relationships from just 'married or single'. Canada includes the options "common law union, annulled marriage, legally separated".¹² Georgia, the Western Balkan countries, Turkey, and Mongolia allow for six types of marital status, including single, married, separated, divorced, widowed and other.

⁹ The groups are defined and analysed in ODIHR's Baseline Study on Cross-Border Mobility in the OSCE region. They include: Group 1: EU Member States and Schengen area countries; Group 2: North American countries; Group 3: Commonwealth of Independent States members; and Group 4: Other OSCE participating States. Countries were grouped in this manner due to visa-free entry between members of the same group, common legal frameworks within the groups, and certain similarities in visa policy towards countries outside the group. Usually these features coincide with geographical proximity.

¹⁰ However, the Russian and Ukrainian translations of those questions and accompanying instructions posted on the Schengen Area States' official websites use only masculine forms of terms like "applicant" or "EU national", which is room for improvement.

¹¹ An exception here is in Montenegro, which provides an explanatory note in its visa application form, stating 'masculine terms used in this form for applicants include females'. In addition, in the Russian language application form for Mongolian visas, only the masculine form of the term 'single' is used.

¹² Canadian Visa application system website.

Photo criteria on visa application forms concerning head covering that are clear, publicly available and in which cultural and religious norms are taken into consideration:

Photos, including biometric photos, are often required for the issuance of a visa. The prohibition of cultural head coverings could disproportionately affect men or women from different cultures. Provisions that allow head covering while still fulfilling the biometric requirements addresses this issue. Clear and public instructions on requirements ensures people are informed in order to properly complete their application.

- For example, the Schengen uniform visa rules allow the use of a cultural covering, as long as the face is clearly visible from the bottom of the chin to above the eyebrows including both cheeks. Albania, Bosnia and Herzegovina, Georgia and Montenegro also provide clear instructions on their consular websites that applicants are allowed to have their photo taken with their religious or medical headwear.

Clear and transparent rules on required supportive documents:

When it is clear which supportive documents are necessary for the issuance of a short-term visa, for example to confirm the purpose of the journey or financial status documents, it makes arbitrary dismissal of an application based on personal biases less possible. For example, when rules are not clear, there is a risk that requests for additional information are discriminatory in nature, possibly as a result of individual biases. Specific individuals (men or women) may be asked for additional information, while others are not. Furthermore, women in some communities often do not have the same access to vehicles or travel as primary child-care providers and would not be able to make multiple visits to submit additional documents.

- Belgium, Germany, Greece, Denmark, Spain, Italy, Malta, the Netherlands and

Switzerland specify the amount of money per day needed for the applicant's stay as a condition to obtain a short-term visa, the applicant should confirm they have this money available (please see, however, potential problems outlined below on Financial proof of resources).

No restrictions imposed on people with HIV:

UNAIDS has stated that while HIV is a communicable disease that raises public health concerns, restrictions on travel based on HIV-status is not justified on the basis of public health grounds and is not necessary, given that the disease is preventable and manageable. UNAIDS goes on to say that mandatory HIV testing and travel restrictions based on HIV status reinforce stigmatizing stereotypes against people living with HIV, leading to HIV being viewed as a foreign import that concerns only foreigners.¹³ In addition, certain groups/communities may be disproportionately affected due to perceptions about their sexual behavior and, thus, may face disproportionate restrictions on the basis of health concerns. Therefore, removal of mandatory HIV declaration or testing for obtaining a short-term visa is a good practice.

Sex disaggregated statistics:

Sex disaggregated statistics on admissions and refusals of visas can shed light on the types of people who are granted or refused visas. In this way, countries can conduct gender analysis and develop policies that address potential inequalities. The same applies to statistics on appeals, which may provide valuable statistical information on visa rejections and who is most affected.

- Canada conducts an annual comparative gender analysis of their immigration policy (including for temporary visits) making its findings readily available for scrutiny to all stakeholders and the general public. The data presented in an annual report, are sex-disaggregated and reflect the outcomes of economic immigration, family

¹³ Still not Welcome: HIV related travel restrictions, UNAIDS explainer, UNAIDS/UNDP, 2019.

reunifications, resettlement, settlement and integration of newcomers.¹⁴ While this analysis does not include disaggregated statistics of short-term visa applications received and issued, it is a practice that could be replicated for short-term visa policies.

The possibility to appeal a negative decision:

Information about and clear procedures for the process to appeal a negative visa decision, as well as the obligation of states to provide reasons and grounds for denial, provide the opportunity to counteract possible gender discrimination, but also for states to address any identified discrimination. Staff training, for example, can be introduced in cases where gender discrimination is identified.

- In the Schengen area, states should provide applicants with information about the reason for denial and the appeals/complaints mechanism and procedures. In Bosnia and Herzegovina, Serbia and Ukraine, the possibility to appeal a negative visa decision is provided.¹⁵

2. Identified areas for improvement

Potential gender bias on consulate websites:

While information can be intended to protect visa applicants against fraud, statements such as, “transferring money to unknown persons, especially women, whose acquaintance they have made in the Internet,” or “Any claims that a large amount of money is needed for obtaining a visa are false,” reinforce sexism and gender bias.

Assumptions about pregnant women:

Upon arrival to a destination country, a visibly pregnant woman may have to prove to immigration authorities that she can pay for medical expenses in that country or that she will return to her country of residence

before her due date. Since different women carry their babies differently, the border guard’s assumptions about the stage of her pregnancy may impact her travel based on their assumptions concerning ‘birth tourism’. This could also affect her ability to obtain a visa in the future, due to rules pertaining to previous denials of entry. More clarity in OSCE participating States’ visa policies regarding the travel of pregnant women, ensuring non-discrimination, would be of benefit to all.

Financial proof of resources:

Applicants are generally required to prove their financial capacity to cover all costs relating to their journey and their return to the country of origin; they are also required to produce financial documents to this effect. Most frequently, those documents are bank certificates and/or balance statements. Given the gender roles and inequalities that still persist in many countries, often women will not be able to prove this, since many are still economically reliant on men and often do not have bank accounts or financial independence. The inability to provide proof may, therefore, discriminate against women in cases where they are economically reliant on men.

Proof of readiness to return to country of origin:

Some countries not only require evidence of a person’s cash flow, they also require a certificate of employment indicating the applicant’s position and salary, confirming their leave. Such documents may, in particular, affect women who are not working due to the gender role assigned to them, or if they receive partial pay during maternity leave. In addition, in all OSCE participating States, the employment rate of women is less than men, and the salaries of women are also less than that of men. All this can also affect their ability to prove that they will return to their country after travel.

¹⁴ See the Canadian Government’s 2019 Annual Report to Parliament on Immigration.

¹⁵ While this is provided for in legislation, information on consular web-sites is not available.

Requirements for parents that travel with children, including same sex or single parents:

In some states, in order to protect children, when a parent is traveling alone with a child, they are required to obtain written consent from the other parent, providing a notarized original and copy, with the ID of the other parent not traveling with the child. Some countries allow other documents to support the visa application, including a court decision on granting full parental custody of the child to one parent, the other parent's death certificate, a certificate of the missing parent, or proof of being a single parent. Since women are generally the primary care-takers of children, the complex procedures for obtaining these documents, or the active obstruction of the process by a current or former partner, could negatively impact women's opportunities to travel and could hamper women's (and their children's) mobility to a greater degree. This could, of course, also be the case with men as primary care-takers, though such occurrences are significantly fewer.

In some cases, this creates serious obstacles to the freedom of movement for domestic violence victims, who statistically are more often women. In addition, where same-sex partnership is not recognized by a state, more challenges for traveling alone with children can impact parents. While strict rules for documentation provision constitutes a legitimate aim to prevent parental kidnapping, rules can be introduced that would prevent such discrimination. In certain situations where there is unreasonable obstruction of the process, relevant authorities (i.e., family courts) should be able to simplify the process of obtaining required travel documents, to facilitate the single parent's mobility.

Clarity and specificity of supporting documents required for obtaining a child's visa:

As women, in most societies, are still predominantly the primary care-takers

of children, their own travel is most likely conditioned on their child's ability to travel. It is important that information, including about biometric requirements for the issuance of a visa for children, is clear, transparent and accessible. If information is lacking, there is a risk that a child could be rejected, also affecting the primary care-taker. This could result in multiple trips for parents, women in particular, who in some states might not have access to vehicles or drivers licenses, or may not be able to travel. Single mothers may be particularly affected, especially if they are in full-time employment.

Conscious and unconscious bias and profiling at visa interviews and borders:

Training of visa and consular staff, as well as border guards, to deal with unconscious bias is important in mitigating the potential unintended and adverse effects of profiling. Profiling practices rooted in stereotypes about a combination of race, ethnic origin, gender, sexual orientation, religion or other characteristics. "Unconscious bias" refers to associations people may have that can have a significant influence on their attitudes and behaviour, for example by automatically responding to men and women from different racial or ethnic groups in different ways.¹⁶ These reactions are influenced by each person's background, cultural environment and personal experiences resulting in quick judgments and assessments of people and situations. People can be trained, however, to recognize and control their biases. Whether or not such bias exists in relation to visa applications could be determined based on gender analysis of applications in relation to rejections by gender, ethnic group, and other relevant variables (please see section on disaggregation of data).

Face recognition and biometrics for visas:

Some countries require the collection of biometrics on a visa application. Studies have shown that inaccuracies in outputs of biometric face recognition algorithms is not universally the same but depend heavily on

¹⁶ For more information about unconscious bias see this website.

gender, colour and age. These studies have shown that in general, female faces are more difficult to recognize and produce more false rejections and false acceptances. Similarly, lighter faces produce more accurate results than dark faces. The highest error rate is produced on darker female faces (with an error rate over 30 per cent higher than light male faces).¹⁷ What this means practically is that women are more often than men stopped by border guards, or electronic e-gates, potentially affecting their ability to travel.

Availability of sex disaggregated data and regular comparative gender analysis:

The collection, analysis and public dissemination of data on short-term visas contributes to evidence-based and gender-responsive policy development. While some countries have statistics on visa refusals on their official websites (e.g. the United Kingdom), none of the OSCE participating States publish sex-disaggregated statistics on the number of visa applications received and visas issued. If this data were available, it could assist countries to further research whether potential inequalities may exist and the reasons for this. Potential bias can also be assessed with this data.

Lack of gender disaggregated data on appeals:

While general appeals procedures are in place in most of the OSCE region, transparent information on the appeals procedure is often lacking. Furthermore, when appeals are not gender disaggregated and analyzed, even when general statistics are available, (visas applications received and visas issued) it is not possible to identify potential discrimination. Such data and gender analysis could therefore reveal potential discrimination to tackle it.

¹⁷ Buolamwini, J., Gebru, T. "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification." Proceedings of Machine Learning Research 81:1–15, 2018 Conference on Fairness, Accountability, and Transparency.

Conclusions and recommendations

While there are a number of positive examples of gender inclusive visa practices in the OSCE region, there is still scope for improvement, which could positively impact equal opportunities to travel and the benefits to individuals, as well as to non-discrimination.

Steps OSCE participating States can take as outlined in this leaflet include:

- Introduce visa application forms that take into account gender, in order to ensure not only a culture of equality but also to eliminate any potential discrimination;
- Remove gender biased statements and information on consulate websites;
- Provide safeguards against gender assumptions and profiling through clear and transparent rules and training for visa issuing authorities and border guards;
- Develop policies that counter possible gender discrimination due to existing financial inequalities. Short-term visa requirements should be aligned with what can be reasonably expected from women and men applying;
- Eliminate mandatory HIV declaration or testing in order to obtain a short-term visa;
- Simplify the required travel documents to facilitate single parent's mobility, while retaining strong safeguards to ensure the protection of children;
- Ensure that any algorithms that use biometrics for visas do not discriminate against people at borders based on gender; and
- Provide transparent rules on the mechanisms to appeal a visa-refusal and collect and analyze gender disaggregated data on appeals to provide both the opportunity for individuals to counteract possible discrimination and for states to identify and tackle inequalities.

Appeals can also reveal potential gender bias of staff and training needs.

This list of recommendations, however, is not exhaustive. In order for OSCE participating States to gain a full picture of the gender dimensions of their short-term visa policies and inequalities that may arise, it is most important to conduct a gender and diversity impact assessment. This includes collecting gender-disaggregated statistics and conducting gender analysis on visa refusals and appeals in order to understand and assess whether potential inequalities may exist and why. In this way, relevant changes may be introduced that bring about equality in short-term cross border mobility.

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