

# How protecting your daughter can lead you to being denied international protection in Belgium: On Rape Mythology, Delayed Disclosure, and Asylum

May 11, 2023 | Feminist Theory in Refugee Law | 0 comments

*Blog post by Lore Roels, a PhD researcher (FWO fellow, 2021-2025) at the Migration Law Research Group (Faculty of Law and Criminology) and the International Centre for Reproductive Health (Faculty of Medicine and Health Sciences) at Ghent University (Belgium). This blog post is part of the [blog series on feminist theory in legal displacement research](#).*

## Introduction

*“The fact that [you] did not mention [your 12-year-old daughter’s fear of forced marriage] during [your initial asylum interview] ..., merely because [your] daughter asked [you] not to go into detail about her, is by no means serious ... and undermines ... the credibility of [your story].”*

With this argument (among others), the Belgian asylum authorities (the [Council for Alien Law Litigation](#), an administrative court) judged an Albanian mother and daughter’s fear of [sexual](#) and [gender-based](#) violence (SGBV) as not credible in March 2022. They were fleeing psychological, physical and sexual domestic violence, stalking, and child abduction with the aim of forced marriage by their ex-husband/father. The reasoning seems to assume that ‘real’ SGBV survivors/victims would disclose their experiences immediately and would not change their account of what happened. This type of reasoning shows strong characteristics of what is termed a ‘rape myth’ in the criminal justice context, which is useful to understand stereotypical reasoning in refugee status determination that denies protection to survivors/victims of SGBV. More specifically, it can be categorised as a ‘[victim fabrication myth](#)’ (i.e. (alleged) survivors/victims tend to lie or exaggerate). The example cited above is not unique to the Belgian context. The European Court of Human Rights (ECtHR) has also proven to assume delayed disclosure/reporting as evidence of insincerity in SGBV-related non-refoulement cases (e.g. [Ameh v. UK](#), §13; [V.F. v. France](#), p.12; [Idemugia v. France](#), p.6;

[A.A. a.o. v. Sweden](#), §87; [R.H. v. Sweden](#), §72-73; [Sow v. Belgium](#), §78-81). Such arguments can be called into question, particularly in light of international law provisions such as the [Istanbul Convention](#)'s articles 60 *jo.* 61, obliging member states (e.g. Belgium) to ensure 'gender-sensitive' asylum and non-refoulement assessments.

This blog post will illustrate how the feminist concept of rape mythology provides a useful framework for identifying gender-stereotypical thinking patterns in refugee status determination on the grounds of SGBV. In doing so, it draws on feminist legal approaches that challenge refugee law's failure to account for those experiencing gendered violence and to describe their silence. It shows how feminist engagement with the refugee definition needs to be [rekindled](#) to uncover how cases involving (mostly private) SGBV are too often interpreted through the [public lens of the \(mostly male\) political refugee](#), while purporting to be [objective](#).

## Rape mythology and the doctrine of prompt complaint

In 2013, the UN Refugee Agency ([UNHCR](#)) expressed the concern that asylum authorities might "[...] *reach conclusions based on stereotypical, superficial, erroneous, or inappropriate perceptions of gender*". With regards to SGBV, the criminal justice system has long identified such perceptions as 'rape myths'. Introduced by the feminist movement in the 1970s ([Brownmiller](#); [Schwendinger & Schewndinger](#); [Feild](#)), rape myths were further defined by [Burt](#) as: "*prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists*". These myths function as (un)conscious cognitive schemas, allowing us to mentally [structure](#) information about SGBV. However, they can also serve to [justify](#), [rationalise or minimise](#) the behaviour of perpetrators and shift responsibility for sexual and gender-based victimisation to survivors (so-called [victim blaming](#)). The extent to which decision-makers adhere to rape myths (termed '[rape myth acceptance](#)', RMA) affects the way in which they conduct credibility assessments of SGBV stories. This effect increases with the amount of room for [interpretation](#), for example where little evidence is available. One context particularly characterised by common [scarcity of evidence](#) is that of refugee status determination. The feminist wave giving birth to rape mythology also left its mark on the refugee field. Early feminist engagement with refugee law in the 1980s started to [include](#) gender in the refugee definition, followed by international conclusions (e.g. [UNHCR](#)) and recommendations (e.g. [CEDAW](#)). Even though SGBV is now recognised in the refugee definition as a form of persecution, structural gendered discrimination in practice still causes SGBV survivors/victims to be [denied](#) international protection when they need it, similar to queer applicants, as set out in another post of this blog series ([Wessels](#)).

The asylum case law example introducing this post can be linked to one specific rape myth category, namely: [victim fabrication](#) myths, also referred to by others as '[hue and cry](#)' myths or the [doctrine of recent or prompt complaint](#). These myths rely on the assumption that "*an ideal victim would tell immediately*" ([UNODC](#)). It can play a role in two different

phases of the reaction process after a SGBV experience, namely: disclosure to private networks or asylum authorities, and formal reporting to government officials (e.g. police) in the country of origin. In the first (disclosure) phase, the myth may occur as: “[a sexual assault victim] will disclose [the] violation at the first reasonable opportunity” ([Craig](#)) or “delays in disclosure [should be] associated with dishonesty” ([Pertek, Phillimore and Goodson](#)). At the second (reporting) stage, examples may be: “any delay in reporting rape is suspicious” ([Leverick](#)) or “[a real] victim [can] promptly seek help and report” (*International Commission of Jurists, ICJ*). Both types of myth-like reasoning occur in the Belgian case cited above. This post will discuss them separately and substantiate why they not only lack evidence-based grounds, but also go against established international guidelines and legal doctrine.

Delayed disclosure/reporting occurs in more asylum procedures than just those related to SGBV. A lot has been written about the culture of disbelief in asylum procedures in general (e.g. where [trauma](#) or [sexual orientation and gender identity](#) play a role). The concept of rape mythology adds value as a framework for analysing the gender sensitivity of refugee status determination on grounds of SGBV for a number of theoretical and practical reasons. One thing that distinguishes SGBV from other forms of persecution, inspiring a separate analysis from the rape mythology perspective, is the particular role of [shame](#) (as confirmed by [Herlihy](#) in an interview as part of the author’s ongoing fieldwork, unpublished). Research has shown that “[asylum seekers] with a history of sexual violence reported more difficulties in disclosing personal information during [asylum] interviews ... and scored significantly higher on measures of ... shame than those with a history of non-sexual violence” ([Bögner e.a.](#)). This shame, often honour-related and generating (internalised) victim-blaming, has an undeniable impact on “survivors’ self-confidence, self-worth, and trust in people and institutions” ([Papoutsi e.a.](#)). Expertise and evidence on this impact have long and extensively been generated through rape mythology in the criminal justice context. As such, the concept of rape mythology provides a rich source for developing evidence-based analyses of the gender-sensitivity of asylum procedures. Shame plays a role in more types of SGBV than only rape, such as (psychological, physical and sexual) domestic violence in the case discussed here. Therefore, this blog post and the author’s doctoral research in general expand the concept of rape mythology and apply it to (asylum-specific types of) SGBV more broadly.

A ‘gender-sensitive approach’ in refugee status determination is required by international law, but its precise meaning is still “[less understood](#)” and often not implemented by decision-makers today. On a practical level, rape mythology can provide workable denominators (the myths) to identify gender-insensitive reasoning patterns in a vast amount of asylum decisions with varying factual circumstances. To tackle the elusive nature of ‘gender-insensitive assessment tendencies’, the concept of rape mythology provides tools to objectively measure levels of RMA (termed [rape myth acceptance scales](#)). Tailored sensitisation and training can result from such identification and measuring exercises,

which have already been rolled out for numerous other settings (such as for judges in [all non-administrative courts](#) in Belgium).

## Delayed (disclosure of SGBV in the) asylum procedure

In the case discussed here, the mother filed for divorce in 2014. During this procedure, the daughter told a psychologist that she strictly refused any contact with her father. The court eventually pronounced the divorce, granting a visiting right to the father. He, who had an extensive criminal record, could meet his daughter every week (for 24 hours) and during holidays, without third-party supervision. He used this right to carry out an attempted abduction of his daughter in 2018. This happened while her mother was abroad, directly after the police had advised her to go and see her father and comply with the visiting right. This visit created the direct opportunity for the abduction, after which the father said he would take his daughter to his native village and marry her off at the age of 13. After the mother and daughter fled Albania and the mother applied for asylum in Belgium, the daughter asked her not to go into details about her father's violence towards her. The mother explained: *"I didn't mention it because I didn't ... because I thought they would interview her. And she was not ready. She was only 12 years old"*. After the mother's first application was rejected, she eventually disclosed the abduction and forced marriage in a second procedure. As mentioned above, the authorities argued herein that the reason behind this withholding of information was not serious and undermined her overall credibility.

The [Belgian Aliens Act](#) obliges asylum seekers to file their application as soon as possible, unless they can give good reasons as to why they failed to do so. While the authorities dispose of a certain discretion to assess such 'good reasons', their practice often tends to consider late submission of (flight motives in) an asylum application as an indication of non-credibility. However, assessing any delay in SGBV disclosure as necessarily manipulative is an assumption lacking objective justification. No evidence supports a link between delays in disclosure of SGBV and their truthfulness. On the contrary, the [ICJ](#) explains in its report on 'Eradicating Harmful Gender Stereotypes': *"the overwhelming body of current empirical ... data ... establishes that it is not inherently 'natural' for the victim to ... disclose immediately"*. Instead, survivors/victims are often reluctant to disclose because of stigma and shame, especially when the perpetrator is someone they know personally (as is the case here). For Albania, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence ([GREVIO](#)) confirmed in a report of 2017 that it was alarmed about the fact that less than 10% of SGBV survivors/victims disclose and seek help. The Supreme Court of Canada generally concluded that it is no longer allowed to rely on the assumption of prompt disclosure of SGBV, since *"the timing of disclosure is, alone, of no significance to a complainant's credibility"* ([Craig](#)). As mentioned above, for sexual violence (SV) in the asylum context in particular, [Bögner, Herlihy and Brewin](#) explain that *"[Asylum seekers] with a history of sexual violence] reported more difficulties in disclosing*

... during interviews [and] were more likely to dissociate ... than those with a history of non-sexual violence". In conclusion, UNHCR has advised against linking delayed disclosure to non-credibility both for delayed statements [during the asylum procedure](#), and [delays in filing an asylum application](#) as such. It respectively stated that: "delays in disclosing key facts ... are often explained by stigma, shame or fear" and "an applicant ... may be credible, even though the application was not made at the earliest possible opportunity ... [for reasons of procedural barriers], anxiety, ... mistrust of the authorities, ... [or] the effect of ... trauma)". These *de jure* guidelines are in sharp contrast to their *de facto* implementation by the Belgian authorities in the case analysed here, which seems to uphold the myth that survivors/victims in principle can and should disclose SGBV to asylum authorities in the host country as soon as possible, regardless of the nature of the violence or the barriers to such disclosure.

## Delayed or non-reporting of SGBV in the country of origin

In the same case, the mother and her daughter formally contacted the Albanian authorities at least 16 times over a period of 7 years, either to file complaints to the police or to obtain restraining orders from the court. While three restraining orders were temporarily granted (only for the mother), each of these was violently breached by the ex-husband, without him ever being sanctioned. While the authorities claimed to have an arrest warrant against him, they never effectively arrested him and even on several occasions refused to collect evidence or send police officers. Additionally, they enforced the father's above mentioned visiting right, which created the opportunity for the attempted abduction. Just before leaving for Belgium, the mother and daughter were threatened in their family home by creditors of the man. For this last incident, they did not file a complaint but immediately fled the country. The asylum authorities in Belgium reproached them not only for failing to file a formal complaint this last time. They also argued that the Albanian authorities "[acted] thoroughly each time ... [the applicants] appealed to them". After their arrival in Belgium, the father filed a complaint in Albania for international child abduction against his ex-wife.

Since the unavailability of state protection is a requirement to be granted refugee status in the [UN Refugee Convention](#), failure to report SGBV to local authorities is regularly seen as proof of 'non-exhaustion' of state protection. However, the United Nations Office on Drugs and Crime's ([UNODC](#)) handbook for the judiciary on effective responses to SGBV states that the prompt complaint requirement is not supported by any evidence and that statistics indicate that most SGBV cases are never reported at all. For domestic violence in Albania specifically, the European Parliament's [Committee on Women's Rights and Gender Equality](#) confirmed in a report of 2019 that: "only 8.4% of women who ever experienced domestic violence ... asked for help from institutions". [UNHCR](#) explains that SGBV incidents are often underreported due to stigma and shame attached to this type of violence. [CEDAW](#)'s General Recommendation No. 32 adds that "[not filing] a complaint to the authorities before

*[fleeing] should not prejudice [an] asylum claim, especially where ... there is a pattern of failure in responding to ... complaints of [SGBV]. ... [An applicant] may ... lack confidence in [or access to] the justice system ... or fear ... retaliation for making such complaints.*” The latter was expressed by the mother *in casu*, who stated: *“I never dared to go to the police [in the first years of our relationship] because he always threatened me. He said he ... would kill my family members [and] parents”*. This example uncovers the authorities’ [formalistic implementation of the guidelines](#) regarding state protection, which dismisses any gendered justification for non-reporting of SGBV to local authorities. In doing so, they seem to uphold the SGBV myth that survivors/victims in principle can and should report SGBV to domestic authorities in the country of origin before fleeing, regardless of the nature of the violence or the effectiveness of such reporting.

## **The more operational a state apparatus, the easier survivors/victims disclose SGBV?**

In the case illustrated above, the Belgian asylum authorities accepted the myth that ‘real’ SGBV survivors/victims will disclose and report the violence at the first reasonable opportunity (both to the local authorities in the country of origin and to the asylum authorities in the host country). Preliminary findings from a survey with the Belgian asylum authorities (as part of the author’s ongoing doctoral research, unpublished) add nuance to the level of acceptance of these myths. Some respondents indicated that the requirement to report SGBV to local authorities depends on the country of origin and the functioning of its state apparatus. For example, one respondent explained this nuance as: *“[O]ne is required to be more demanding in terms of attempts at protection [(i.e. reporting)] if the applicant comes from a safe country (he/she must be able to explain convincingly why he/she has not gone to the authorities, for example).”* Following this reasoning, SGBV survivors/victims should therefore be more likely to report/disclose in so-called ‘safe countries’ (such as Albania for the Belgian asylum authorities) where the state apparatus is functioning well. However, as illustrated by the statistics for Albania above, the barriers to report and disclose remain high even in a ‘safe country’ ([Amnesty International](#)).

With regard to EU member states, state apparatuses are also seen as ‘well-functioning’ since they are considered safe countries of origin in relation to asylum matters ([Protocol 29](#), the Aznar Protocol of the TFEU). However, the reporting and disclosure barriers mentioned above seem equally present in these contexts. For example, an EU-wide survey on violence against women from the EU Agency for Fundamental Rights ([FRA](#)) shows that 35% of SGBV survivors/victims never spoke about their experience to anyone and *“of those women who spoke to somebody or reported the most serious incident to some authority, ... 4% of victims contacted the police...”*. In Belgium, the numbers for the general population are similar, as the 2021 [UN-MENAMAIS](#) study showed: *“only 7% [of sexual violence survivors/victims] sought formal help, most of whom turned to a mental health professional, and 4% reported the incident to the police or know someone else did”*. For applicants for international protection specifically, the percentage of survivors/victims who

never talked to anyone is even higher: 62%. When they did, they were most likely to confide in a friend (70%).

Factors such as fear, stigma, shame, distrust in authorities, (internalised) victim blaming, lack of self-identification as a survivor/victim (especially for men), effects of post-traumatic stress disorder (PTSD) and other mental health problems ([Herlihy](#); [Papoutsi e.a.](#); [Magugliani](#); [Craig](#); [Hooper](#); [Rousseau e.a.](#); [UN Voluntary Fund for Victims of Torture](#); [UNHCR](#); [Bloemen & Mellink](#)) may influence the timing of SGBV disclosure. [Lorraine M. Mponela](#), a migrant rights campaigner with lived refugee experience states: “[While being] required to disclose all information ... at once[,] ... it takes time to be comfortable talking about things you have suffered, especially of a sexual nature”. This applies regardless of the state apparatus in which such disclosure takes place. In conclusion, next to applicants’ countries of origin, the sensitive nature of SGBV itself and the individual circumstances of the violence experienced also largely determine one’s tendency to disclose or report.

## Conclusion

This blog post departs from a Belgian case law example to illustrate the SGBV myths at play in gender-related asylum procedures. It applies the concept of rape mythology developed in the criminal justice context to credibility assessments in the asylum context. It illustrates how ‘victim fabrication’ myths occur in the expectation of asylum authorities that ‘real’ SGBV survivors/victims will disclose and report at the first reasonable opportunity (both to the local authorities in the country of origin and to the asylum authorities in the host country). After setting out the myth-like character of these expectations, it discusses the ubiquity of barriers specific to disclosure and reporting of SGBV experiences. In doing so, it nuances the idea that the better a state apparatus functions, the more one can be expected to report or disclose SGBV experiences. Instead, next to one’s country of origin, the sensitive nature of SGBV itself and the individual circumstances of the violence experienced also largely determine one’s tendency to disclose/report. Generally, the blog uncovers how the *de jure* recognition of SGBV as international protection-worthy has been established in multiple international legal instruments. However, the *de facto* access to protection for survivors/victims is complicated by decision makers’ *contra legem* tendency to deploy myth-like thinking patterns in credibility assessments of applicants with SGBV-related flight stories. As such, existing international legal provisions prescribing gender-sensitivity are at times overruled by the entrenched SGBV myth acceptance of some decision-makers. The blog proves how [Arbel, Dauvergne and Millbank](#)’s conclusion in 2014 that “*the project of refugee law reform to meet the concerns of gender is at best half-done, and ... legal change itself can only be part of the story*” is still a pressing one. Achieving gender-sensitive decision making in practice requires sensitisation about stereotypical and myth-like thinking patterns that might seep into gender-related asylum and non-refoulement procedures, for example through tailored training programs. In sum, this analysis demonstrates the value of rape

mythology as a feminist concept to uncover gender-stereotypical reasoning patterns in refugee status determination.

*Acknowledgements: The author would like to thank the applicants whose asylum procedure was discussed here for their trust and participation in the research and interview. She also appreciates the warmth with which she is being welcomed by [NANSEN](#) NGO to do PhD fieldwork, through whom she gained access to the case file.*

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