



The Protection Gap

Summary

Women seeking asylum continue to be missed out. New international protocols list provisions for women in similar situations at home or abroad. But women seeking protection in the UK from human rights abuses abroad are not benefitting from these provisions.

This protection gap is the subject of this briefing.

Introduction

The [Charter of Rights of Women Seeking Asylum](#)¹ welcomes the Government's new initiatives to provide protection and support for those at risk of or survivors of Violence Against Women and Girls (VAWG) and gender-based violence. However there is an urgent need for joined up government to ensure that such protection and support is also provided for women who flee human rights abuses abroad and claim asylum in the UK. As clearly stated in the [Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence](#) (the Istanbul Convention) signed by the Government in March 2012, **women have the right to protection from VAWG regardless of their immigration status.**

During summer 2014, the Government championed two VAWG-related initiatives which are relevant to women seeking asylum. The Global Summit on Preventing Sexual Violence in Conflict initiated by the Foreign Secretary, William Hague, in mid-June resulted in the [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#). At the Girl Summit to end Female Genital Mutilation (FGM) and Child, Early and Forced Marriage (CEFM) sponsored by DFID, the Cabinet Office and the Home Office in July the Prime Minister, David Cameron, announced a package of resources to support the [prevention of FGM and forced marriage](#).

In addition the UK will be bound by the obligations in the [European Union Directive on establishing minimum standards on the rights, support and protection of victims of crime](#), which will establish minimum standards on the rights, support and protection of victims of crime when it comes into force on 16th November 2015.²

¹ Initiated by Asylum Aid in 2008, the Charter calls for minimum standards for women in the UK asylum system. It now has over 350 organisational signatories.

² Whilst the EU Victims' Directive focuses on provision for victims of crime in an EU member state, we believe there should be a read-across to victims of similar crimes in non-EU countries who claim asylum in the UK.

1. Anomalies in treatment

The anomalies below focus on the provisions of these initiatives that are relevant to women seeking asylum in the UK. The provisions are provided in full in the Appendices.

	Provision in international protocols	Provision by UKVI
i.	provision of psychosocial assistance, trauma support and counselling for victims of gender-based violence*^	no national referral process. Pilot in London awaiting clearance.
ii.	providing information about the process in detail appropriate to specific needs, personal circumstances and type of harm*^	limited information specifically for women seeking asylum.
iii.	protecting dignity and risk of emotional and psychological harm during questioning^	new Asylum Instruction on Asylum Interviews and Foundation Training include some reference to this.
iv.	having interviews conducted by one person^	interviews generally conducted by one person but practice is for decisions to be made by another.
v.	interviews of survivors of gender-based violence conducted by a person of the same sex as the survivor if they so wish*^	in the Asylum Instruction on Gender but not always followed. Furthermore, guidance does not guarantee that if a woman requests a female interviewer and / or interpreter, that she will be guaranteed one.
vi.	not interviewing survivors in presence of children*	childcare provision is piecemeal across the UK. There is no childcare provision for women in London.
vii.	training for interviewers/interpreters on trauma, PTSD recognition and memory*	no specific training.
viii.	training interviewers and interpreters on sexual violence*	limited training for interviewers, none for interpreters.

*International Protocol on Sexual Violence in Conflict

^European Union Directive on Victims of Crime

Despite the fact that violence against women and girls, sexual violence in conflict, FGM and forced marriage are common reasons for women and girls to claim asylum in the UK, the rights of women seeking asylum and the related needs they have are not mentioned in these initiatives. Yet in stating its commitment to prevent and protect from FGM, the government states “The law in this country applies to absolutely everyone.” The Home Affairs Select Committee similarly states “The state has a duty of care to all those who live within its borders, regardless of their immigration status.”

The new provisions include no parallel commitments for women seeking asylum.

Also the new packages include no additional resources for UK Visas and Immigration (UKVI).

Analysis

While the circumstances of the women may be different, there are clear parallels to be drawn. Women fleeing sexual violence seeking protection in the UK should be granted the same rights as survivors of sexual conflict abroad. Women and girls fleeing FGM and child, early and forced marriage (CEFM) should be granted the same rights as women and girls at risk of FGM and CEFM in the UK.

The principles behind these parallels are detailed in our Womens' Asylum Charter campaigns, [Every Single Woman](#) and [Missed Out](#).

The Government is committed to the harmonisation of standards between departments and immigration work is expected to comply with the gender equality duty.

The [Government's Violence Against Women strategy](#) promises a "cohesive and comprehensive" response to VAWG across government. We welcome the fact that women seeking asylum are now included in the VAWG strategy and action plans. UK Visas and Immigration (UKVI) is making some progress on VAWG issues.

The provisions detailed above are also found in [General Recommendation 32](#) of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) published by the United Nations in November 2014.

Conclusion

There has been significant movement recently in recognising the need to tackle sexual violence in conflict countries, but when women and girls from those countries seek refuge in the UK as a result of that violence they encounter serious barriers, and the gender analysis that the Government applies overseas is not applied in its asylum policy.

The Government's cohesive approach to VAWG needs to extend to its new initiatives. This means bringing in the following provisions:

- Guarantee that women can have a female interviewer and interpreter if they choose
- Provide childcare during screening and asylum interview
- Training for interviewers and interpreters on sexual violence, trauma and memory
- Counselling and support for trauma for women who have experienced gender-based harm
- Information about the asylum process, rights and entitlements specific to women seeking asylum

To achieve this we believe a greater strategic oversight, accountability, leadership and vision of the asylum work on VAWG is needed to maintain the progress already made and ensure that resources and capacity are allocated to continue and enhance this work.

Mechanisms need to be put in place to ensure that the support and protection provided for women under the initiatives detailed above are also provided for women seeking protection in the UK from human rights abuses abroad.

The protection gap must be closed.

Appendices

Relevant sections of original text

Appendix A

Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)

Article 4 – Fundamental rights, equality and non-discrimination

1 Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.

2 Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

- embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
- prohibiting discrimination against women, including through the use of sanctions, where appropriate;
- abolishing laws and practices which discriminate against women.

3 The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, **migrant or refugee status**, or other status.

Appendix B

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict

1.2 Responding to sexual violence

Responding to sexual violence requires a strong multi-sectoral approach involving the coordinated provision of health services, protection, psychosocial support, and access to justice for survivors.

3.2 Training

Practitioners should have the appropriate level of skills and training to undertake documentation of sexual violence. In particular, practitioners should:

- Ensure that all members of the team, including interviewers, interpreters, analysts and support staff are appropriately vetted, and trained to document violations according to the basic standards as set out in this Protocol.
- Ensure that all members of the team have knowledge and experience of dealing with cases of sexual violence and, in particular, are familiar with the proper interview techniques, terminology and strategies to respond sensitively to disclosure of sexual violence by both female and male survivors/witnesses.
- Where possible, train staff in dealing with trauma and the ways in which to recognise and respond to post-traumatic stress disorders and risks of suicide and self-harm.

3.3 (i) Research

Key topics particularly related to documentation of sexual violence include:

- What are the gender dynamics in the area – both at country and local level – in which the violations are occurring? What are the traditional and cultural beliefs in the community in relation to gender roles? How may this impact the ability of survivors to report sexual violence crimes and access justice?
- What is the community understanding of, and attitudes towards, different forms of sexual violence, including against children? What are the repercussions, if any, for survivors/witnesses? How would the community or family react if they become informed of a crime of sexual violence perpetrated against a member of their community? Would the reaction differ based on the age or gender of the survivor/witness?
- How are different forms of sexual violence criminalised, if at all? What are the legal requirements to prove charges of sexual violence?
- How do cases get investigated and prosecuted at the national and local levels?

4.2 Interpretation

Interpreters are often a key part of the practitioner's team. Interpreters should be appropriately trained, not only in interpretation itself but also in working with survivors/witnesses of sexual violence and, where relevant, with children.

Interpreters should be able to provide the practitioner's team with interpretation during any interaction practitioners may have with members of the community, including during interviews. They should also be able to provide practitioners with the right linguistic and cultural interpretations of key words, behaviours and expressions associated with sexual violence in a particular setting, without changing or influencing the information as provided by the survivor or other witness.

During interviews in particular, interpreters must be able to work sensitively and professionally, and according to the ethical principles of "do no harm".

6.3 Referrals

- Before initiating any documentation process, practitioners should endeavour to identify options for referring survivors/witnesses for assistance and support, and put in place procedures for the referral process itself. The survivors/witnesses they encounter may be in need of immediate medical, psychosocial or security assistance, or they may also find that the process of disclosing information itself is emotionally difficult, traumatic or puts them at additional risk. All survivors and witnesses have a right to know what health, psychological, legal and social services are available to them prior to being interviewed.
- If formal services are not available or accessible, practitioners should assess what informal systems are in place that can be of support to the survivor/witness, including family and community support systems. These forms of family and social support must always be considered when identifying child survivors and witnesses.
- Practitioners should note that the ability for a survivor/witness to access referral and assistance services may be determined by gender – male and female victims are sometimes treated differently when seeking assistance.

7.1 Interview settings [...]

Practitioners must avoid: [...]

- interviewing survivors and other witnesses in the presence of children who may become distressed, or who may increase the risk of a breach of confidentiality.

7.4 Interviewing techniques

Employing the right techniques, behaviour and attitude while interviewing is critical to making a survivor/witness feel respected, empowered and comfortable to share information. To this end, practitioners should:

1. Be careful and strategic with the manner in which they ask questions:

- Encourage the survivor/witness to narrate his/her story and allow them to provide information in the manner of his/her choosing before asking questions specific to the act of sexual violence.
- Do not ask leading questions.
- Repeat back her/his words whenever possible to make sure you understood – then ask for clarification if any of those words require more explanation. Never change her/his words – that would be leading.
- Always ask “how do you know” or “what led you to that conclusion?”
- Ask additional questions when necessary to support, strengthen, or expand on a statement made.
- Never assist the survivor/witness with finding the answer or remembering a fact.
- Never assume any fact – even if the last 50 survivors/witnesses identified the location of a particular incident, never assume that the 51st survivor/witness will report the same location. Ask the question of every survivor/witness.
- Never force survivors/witnesses to remember details which they cannot at first remember (this could have severe consequences for survivors/witnesses).
- Take particular care over how the interview ends, especially where the survivor/witness becomes very distressed or disassociates. Try to end the narrative at a point where the survivor/witness feels relatively safe....
- Show admiration and respect, not pity.
- Always be polite, respectful and attentive. Be especially aware of the cultural expectations of your demeanour in relation to the societal status, role and particular characteristics of the individual you are interviewing.
- Be professional. Take particular care not to appear judgemental, disapproving or disbelieving at any point, including through use of body language or facial expressions you may employ.

- Be flexible with time (remember to leave sufficient time for the interview) and be patient with how survivors/witnesses answer your questions...
4. Consider the language that you use when dealing with a survivor/witness:
- Speak clearly and provide explanations or clarifications if the survivor/witness does not understand the questions.
 - Interviewers and interpreters should work together to create a list of the words and euphemisms that are likely to be used by survivors/witnesses to describe sexual violence and sexual organs.
5. When involving an interpreter in the interview:
- Ensure the interpreter looks at and speaks directly to the survivor/witness, and is aware of pitch, tone, pacing and voice inflections.
 - Speak to the survivor/witness directly (“what did you say after that?”), and not to the interpreter (“ask him what he said next”).
 - Avoid or minimise writing notes while the interpreter translates his or her questions (it is important to observe the survivor’s/witness’ body language and tone of voice).
 - Ensure that you are familiar with sexual violence-related words in the interviewee’s language so that you can react appropriately when sexual violence is discussed. Actively listening (e.g. nodding, even when the survivor/witness speaks a different language to the practitioner) will enhance trust and promote disclosure.
6. Be aware that survivors/witnesses will behave and react in distinct and varied ways when telling or retelling their story. There is no “one” way to behave. Do not assume the survivor/witness will behave or react in a particular way:
- Survivors/witnesses may become distressed, have difficulty expressing themselves, or become upset and withdrawn.
 - Survivors/witnesses may become angry, expressive, defensive, agitated, refuse to answer certain questions, or speak at length about details that are seemingly irrelevant.
 - Survivors/witnesses may be calm, poised, clear, and be able to recollect and relay with accuracy all the events and circumstances surrounding the act.
 - Survivors/witnesses may have difficulty recalling minor details and the sequencing of events may change. There is no direct connection between trauma and credibility – nor memory. Each individual is affected differently by trauma; make no assumptions.
 - Explain to survivors/witnesses that they may choose to stop the interview at any time if they feel uncomfortable or distressed.
7. Do not assume any of the following:
- The survivor/witness will be ashamed.
 - S/he will not want to talk.
 - S/he is extremely fragile.
 - S/he is traumatised.
 - Her/his trauma will impact upon her/his credibility.
 - Female survivors/witnesses will only want to talk to female investigators and male survivors/witnesses will only want to talk to male investigators. However, it should always be asked, where the option is available, what the survivor’s/witness’s preference is.
 - The sexual violence was the “worst” part of their experiences from their point of view.
 - S/he will have physical injuries.

Annex 2 Basic Elements of Multi-Sectoral Response to Sexual Violence Psychosocial/mental health

- Provide survivor with individual counselling
- Discuss the pursuit of justice with survivor
- Provide group counselling
- Work with survivor to handle stigma and rejection
- Work with survivor and community to promote reintegration and social acceptance
- Promote income-generating activities for survivors
- Perform outreach to community members who are also affected

Appendix C

Government End FGM and Early, Child and Forced Marriage initiatives

The [Prohibition of Female Circumcision Act 1985](#) made FGM illegal in the UK. This was replaced by the [Female Genital Mutilation Act 2003](#) [and the [Prohibition of Female Genital Mutilation \(Scotland\) Act 2005](#) in Scotland]. These extended the previous legislation by also making it illegal to take girls who are UK permanent residents to perform FGM outside the borders of the UK, and increased the penalty from 5 to 14 years on conviction. The FGM Act 2003 was extended in June 2014 to make it illegal for anyone who is 'habitually' resident in the UK to take someone abroad for FGM, or to help someone trying to do this. The Scottish Government is currently in the process of extending the 2005 Act in Scotland to bring its legislation in line with that of England and Wales.

The cross-departmental [declaration](#) signed on 6th February 2014 states:

There is no justification for FGM - it is child abuse and it is illegal.

This government is absolutely committed to preventing and ending this extremely harmful form of violence.

The government is clear that political or cultural sensitivities must not get in the way of uncovering and stopping this terrible form of abuse. The law in this country applies to absolutely everyone.

We want to empower girls and our vision is to see an end to FGM. At the same time we will work to ensure that those girls and women living with the consequences of FGM are given the specialised care and support they need.

FGM is not a problem that can be solved by government alone. Indeed, the progress that we have made so far would not have been possible without the commitment of the voluntary sector partners and frontline professionals who work on and campaign tirelessly on this issue.

Women and girls are increasingly speaking out, and diaspora leadership has played a critical role in getting this on the national agenda. The government is committed to supporting and enhancing these on-going efforts.

We undertake to build on this momentum and do all we can to protect girls and women from this abuse and end FGM.

We recognise that a joined-up approach across government and front-line agencies is needed, and tackling FGM forms a key commitment in the government's 'The Call to End Violence Against Women and Girls: Action Plan'.

At the [Girl Summit 2014](#) a new package of action and funding to protect millions of girls at home and abroad from female genital mutilation and forced marriage was announced by Prime Minister David Cameron, International Development Secretary Justine Greening and Home Secretary Theresa May.

Major steps to stamp out these practices include:

- a £1.4 million FGM Prevention Programme, launched in partnership with NHS England to help care for survivors and safeguard those at risk
- new police guidance from the College of Policing and an inspection programme by Her Majesty's Inspectorate of Constabulary (HMIC) that will look at how the police handle cases of FGM
- a consultation on proposals to introduce new civil orders designed to protect girls identified as being at risk of FGM
- new legislation that will mean parents can be prosecuted if they fail to prevent their daughter being cut
- new legislation to grant victims of FGM lifelong anonymity from the time an allegation is made
- a new specialist FGM service which will include social services, to proactively identify and respond to FGM; this will be supported by an ongoing package of work led by the Chief Social Worker Isabelle Trowler
- new programmes to prevent child and forced marriage in 12 developing countries
- an international charter calling for the eradication of these practices within a generation

Department for International Development's new child marriage programme

- increase access to vital services to prevent and respond to child marriage – such as more child protection, education and health services;
- establish local community-based programmes to stop girls marrying young. This will include setting up community engagement projects to change their expectations;
- work with governments and communities to strengthen laws, policies and resources to prevent child marriage in the first place; and
- collect detailed and robust evidence about how to stop child marriage, such as support for civil registration systems to better monitor the age at which girls get married.

Appendix D

EU Directive establishing minimum standards on the rights, support and protection of victims of crime

Article 1 Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

Article 8 Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

Art 9 Support from victim support services

3(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

Article 18 Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 23 2

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

Article 23 2

(d) measures allowing a hearing to take place without the presence of the public.

Appendix E

VAWG Action Plan 2013

Work to ensure that the asylum system is as gender-sensitive as possible

46 Work with key stakeholders to improve the processes for referring asylum seekers who are victims of sexual violence to the appropriate services and signpost women and girls to available information and advice.

47 Improve guidance and training within the asylum system by enhancing the quality of the country information on violence against women and girls available to asylum decision makers; incorporating a violence against women and girls element into credibility training and foundation training for new case owners; and continuing work with Asylum Aid and other corporate partners to develop a training DVD on managing asylum claims from women.

48 Monitor how asylum interviewers and decision makers handle gender-related issues on a six monthly basis, monitor trends in performance over the longer term and address specific gender-related performance issues.

Appendix F

VAWG Action Plan 2014

The asylum system is as gender-sensitive as possible.

Ref.	Action	Lead Dept.	2013 ref.	Timing
79	Work with key stakeholders to improve the processes for referring asylum seekers who are victims of sexual violence to the appropriate services and signpost women and girls to available information and advice.	HO	46	September 2014
80	Improve guidance and training within the asylum system by enhancing the quality of the country information on violence against women and girls available to asylum decision makers; incorporating a violence against women and girls element into credibility training and foundation training for new case owners; and continuing work with Asylum Aid and other corporate partners to develop a training DVD on managing asylum claims from women.	HO	47	September 2014
81	Monitor how asylum interviewers and decision makers handle gender-related issues on a six monthly basis, monitor trends in performance over the longer term and address specific gender-related performance issues.	HO	48	September 2014
82	The Syrian Vulnerable Person Relocation (VPR) scheme to provide emergency sanctuary in the UK for displaced Syrians will prioritise survivors of torture and violence, including sexual and gender-based violence, and women at risk or in need of medical care.	HO	NEW	Ongoing

Appendix G

UN Convention on the Elimination of all forms of Discrimination against Women CEDAW Committee

General Recommendation 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women

IV Application of non-discrimination and gender equality to international refugee law

D Specific recommendations of the Committee

35. States parties should review and remove any reservations to the Convention and consider ratifying the Optional Protocol to the Convention; and consider acceding to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, as well as to other relevant international and regional instruments. They should remove any reservations to those instruments, adopt an asylum law in line with those instruments and apply those instruments in a complementary manner.

36. States that are parties to regional refugee or asylum instruments should ensure that they respect the rights of women in need of international protection and apply those instruments in a gender-sensitive manner. They should also ensure that women enjoy the benefits of those instruments without discrimination and on the basis of substantive equality.

37. States parties should adopt legislation and other measures to respect the principle of non-refoulement, in accordance with existing obligations under international law, and take all measures necessary to ensure that victims of serious forms of discrimination, including gender-related forms of persecution, who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to serious forms of discrimination, including gender-based violence, or to torture or inhuman or degrading treatment or punishment.

38. States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality: fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender as well as for reasons of being lesbian, bisexual or transgender (LBT) and other status, to the list of grounds for refugee status in their national asylum legislation.

39. States parties should report to the Committee on their national policy and legislation with regard to asylum seekers and refugees and gather, analyse and make available sex-disaggregated statistical data and trends over time on asylum claims, countries of origin, reasons for seeking asylum and recognition rates.

40. States parties should ensure that adequate human and financial resources are made available for the implementation of the Convention in respect of asylum seekers and refugees, including gender-related aspects

of that implementation, and seek technical advice and assistance as required.

41. States parties should cooperate with all United Nations agencies, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), in relation to asylum systems and procedures to give effect to the provisions of the Convention and other instruments for refugees with a view to promoting the rights of women asylum seekers and refugees. They should collaborate with civil society and grass-roots non-governmental organizations supporting women asylum seekers and refugees.

42. Asylum procedures of States parties should ensure that women are able to lodge independent asylum applications and be heard separately, even if they are part of a family seeking asylum. States parties should accept that, when the principal claimant is recognized as a refugee, other members of the family should normally also be recognized as refugees (“derivative status”). Just as a child can derive refugee status from the recognition of a parent as a refugee, a parent should be granted derivative status based on the child’s refugee status. It is essential that women who are recognized as refugees, whether in their own right or as derivative status holders, be issued with individual documentation in order to prove their status, be protected from refoulement and secure associated rights.

43. States parties should not deem that a woman asylum seeker lacks credibility for the mere reason of lack of documentation to support her asylum claim. Instead, they should take into account that women in many countries do not possess documentation in their respective countries of origin and seek to establish credibility by other means.

44. States parties should ensure that their border police and immigration officials are adequately trained, supervised and monitored for gender-sensitivity and non-discriminatory practices when dealing with women asylum seekers and refugees. They should ensure that they adopt and implement a gender-sensitive approach of a proper identification system for women asylum seekers and refugees that is not based on prejudices and stereotyped notions of women, including for victims of trafficking and/or sexual exploitation.

45. States parties should recognize that trafficking is part and parcel of gender-related persecution, with the result that women and girls who are victims of trafficking or who fear becoming victims should be informed of and effectively enjoy the right of access to asylum procedures without discrimination or any preconditions. States parties are encouraged to classify victims of trafficking under the “social group” ground in the refugee definition in line with the UNHCR “Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked” and are recommended to take measures so that women and girls are not returned to places where they risk being re-trafficked.

46. States parties should establish adequate screening mechanisms for the early identification of women asylum seekers with specific protection and assistance needs, including women with disabilities, unaccompanied girls, victims of trauma, victims of trafficking and/or forced prostitution, victims of sexual violence and victims of torture and/or ill-treatment.

47. States parties should ensure that interviewers and decision makers at all levels have the necessary training, tools and guidance on the adjudication of gender-related asylum claims. In recognition of the relevant provisions of the Convention, States parties should develop

policies in line with the present general recommendation and with the UNHCR “Guidelines on international protection: gender-related persecution within the context of article 1 A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”.

48. States parties should ensure, throughout the asylum procedure and during the integration process for women granted refugee status, an adequate standard of living, including safe accommodation, sanitary and health facilities, food, clothing and necessary social services, in addition to sources of livelihood and employment opportunities for women asylum seekers and refugees, and provide for appropriate monitoring and complaints mechanisms at reception facilities.

49. States parties should recognize in their legislation that seeking asylum is not an unlawful act and that women asylum seekers should not be penalized (including by means of detention) for their illegal entry or stay if they present themselves to the authorities without delay and show good cause for their illegal entry or stay. As a general rule, detention of pregnant women and nursing mothers, who both have special needs, should be avoided, while children should not be detained with their mothers unless doing so is the only means of maintaining family unity and is determined to be in the best interest of the child. Alternatives to detention, including release with or without conditions, should be considered in each individual case and especially when separate facilities for women and/or families are not available.

50. States parties should institute gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their cases on the basis of equality and non-discrimination. States parties should ensure:

(a) That women asylum seekers have the right to an independent claim to asylum and, in this respect, to be interviewed separately, without the presence of male family members, so that they have the opportunity to present their case;

(b) That women asylum seekers are provided with information about the status of the determination process and how to gain access to it, in addition to legal advice, in a manner and language that they understand. They should be informed of the right to and, upon request, be provided with, a female interviewer and interpreter;

(c) That women asylum seekers have access to competent legal representation in advance of the initial asylum interview. Where necessary, they should be afforded legal assistance free of charge. Unaccompanied and separated girls must in all cases be assigned a qualified legal representative and a guardian to assist them through the asylum procedure and ensure respect for their best interests;

(d) That interviewers use techniques and procedures that are sensitive to gender, age and other intersectional grounds of discrimination and disadvantage that compound the human rights violations that women refugees and asylum seekers experience;

(e) That a supportive interview environment is established so that the claimant can provide her account, including disclosure of sensitive and personal information, especially for survivors of trauma, torture and/or ill-treatment and sexual violence, and that sufficient time is allocated for interviews;

(f) That childcare is made available during the interviews so that the claimant does not have to present her claim, involving sensitive information, in front of her children;

(g) That, while the woman asylum claimant normally bears the burden of proving her asylum case, the duty to ascertain and evaluate all the relevant facts is shared between the claimant and the examiner. The threshold for accepting asylum applications should be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return;

(h) That, in some cases, it may be for the examiner to use all the means at his or her disposal to produce the necessary evidence in support of the application, including by seeking and gathering gender-relevant information from reliable governmental and non-governmental sources on human rights in the country of origin;

(i) That late disclosure by the claimant during the asylum procedure of sexual violence and other traumatic events does not automatically lead to an adverse judgement on her credibility. Reluctance to identify the true extent of the persecution suffered or feared may stem from feelings of shame, stigma or trauma. Statements regarding the confidential nature of interviews, including that information provided by the woman will not be shared with members of her family without her consent, should be standard practice;

(j) That mechanisms for referral to psychosocial counselling and other support services, where necessary, both before and after the asylum interview, are made available;

(k) That, should the application be rejected, the decision must be reasoned and the claimant should be able to appeal against it to a competent body;

(l) That, in the context of durable solutions, the voluntary return home from exile of refugees and their sustainable reintegration in safety are carried out with dignity and the social and economic security of refugees are secured. States who recognized the refugee status of women claimants should ensure that local integration is performed on the basis of equality and non-discrimination and that women are treated with dignity.