



## EQUALITY BETWEEN WOMEN AND MEN

→ Equality between women and men must be ensured in all areas, including employment, work and pay.

→ The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

The European Union is anchored in values of equality, social fairness, freedom, democracy and human rights. The Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union provide the basis to combat all forms of discrimination, establishing **equality as a cornerstone of EU policies**.

Article 2 of the TFEU proclaims these values as the foundational principles of the Union.

Equality between women and men constitutes an integral component of human rights, essential to upholding the rule of law and fostering resilient democracies; it is a prerequisite to ensure freedom, security, justice, inclusion, and overall well-being for the entire European society.

An important facet of the right to equality between women and men is **women's rights to live free of violence**. Male violence

against women is a structural violation of women's human rights and is recognised as such by many of international human rights instruments. A lot of progress has been made, yet there is still a long way to go. As stated by the CEDAW Committee on its General recommendation 35, *"Gender-based violence against women (...) remains pervasive in all countries of the world, with high levels of impunity"*

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## EQUALITY BETWEEN WOMEN AND MEN

### Relevant international legal documents

#### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

General Recommendation No. 25 - Temporary Special Measures

General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

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

Beijing Declaration and Platform for Action  
Human Rights Committee, General Comment No. 28 (2000)

Directive 2006/54/EC of the European Parliament and of the Council  
EU Gender Equality Strategy 2020-2025

### Jurisprudence

#### European Court of Justice

ECJ, *Dr. Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State for Health* (Case C-127/92), 27th of October 1993: Established the

principle of equal pay for equal work between women and men.

ECJ, *Nikolova v. Yordanova* (Case C-423/12), 16th of July 2005: Addressed issues of discrimination and violence against women, highlighting the need for effective legal remedies.

ECJ, *Completesportsmanagement Ltd v. Caroline Zentner* (Case C-394/19), 9th of September 2021: Addressed the application of the EU Directive on the burden of proof in cases of discrimination based on sex, disability, age, or religion or belief.

#### European Court of Human Rights

ECtHR, *M.C. v. Bulgaria*, (Application no. 39272/98), 4th of December 2003 and *Opuz v. Turkey*, (Application no. 33401/02), 9th of June 2009: Addressed the duty of the State to protect women from domestic violence and the need for effective legal remedies.

ECtHR, *Şimşek and Others v. Turkey*, (Application no. 35072/97), 26th of July 2005: Focused on the State's responsibility to prevent honour killings and protect women from violence within their families.

ECtHR, *Eremia and Others v. Moldova*, (Application no. 3564/11), 6th of November 2012: Addressed discrimination against women in the armed forces, emphasising the importance of equal treatment and protection against discrimination.

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## PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT



→ No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The prohibition of torture stands as a foundational value in democratic societies and international human rights law. This principle, holds the status of a *jus cogens* norm—a peremptory norm of general international law.

Historically, the interpretation of torture has been framed from a male-centric perspective, wherein a prisoner “deprived of freedom” faces torture at the hands of the State. This focus has inadvertently perpetuated the public/private divide, sidelining women’s experiences of violence.

The United Nations Committee against Torture’s General Comment No. 2 underscores specific forms of violence against women and girls - such as domestic violence, female genital mutilation, rape, and human trafficking - as falling within the legal framework of the the Convention against Torture (CAT).

Non-State Torture (NST), as defined by

Sarson and MacDonald<sup>1</sup>, expands the scope of the understanding of torture emphasising that it is not solely a state-perpetrated crime but occurs across various contexts, including within families, human trafficking, and the pornography industry.

The pervasive influence of pornography platforms in normalising extreme forms of violence against women, as evidenced by studies and expert testimonies, further complicates the discourse. This normalisation extends beyond pornography, infiltrating legal and societal perceptions, as seen in cases where the abuse and torture of women, comparable to the atrocities committed in settings like Abu Ghraib prison, are trivialized or misinterpreted.

<sup>1</sup> The authors define this concept on the following terms: Non-State torture (NST) is torture committed by non-State actors, in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent groups and gangs, dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, in humanitarian and civil unrest, for example. Besides leading to secondary revictimisation, this disregard can also contribute to silence, abandon, and isolate the victims.

## PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

### Relevant norms from international legal documents

#### Universal Declaration of Human Rights (UDHR):

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### International Covenant on Civil and Political Rights (ICCPR):

Article 7: Prohibition of torture and cruel, inhuman, or degrading treatment or punishment.

#### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):

Article 1: Definition of torture.

Article 2: Obligation to take measures to prevent torture.

Article 3: Non-refoulement (prohibition of returning someone to a country where they would likely face torture).

Article 4: Criminalization of torture.

ECtHR, *Bevacqua and S. v. Bulgaria* (Application no. 71127/01), 12th of June 2008

ECtHR, *Opuz v. Turkey*, (Application. No. 33401/02), 9th of June 2009

ECtHR, *E.S., and others v. Slovakia*, (Application No. 8227/04), 15th of September 2009

ECtHR, *Valiulienė v. Lithuania*, (Application. No. 33234/07), 26th of March 2013

ECtHR, *Eremia v. Moldova*, (Application No. 3564/11), 28th of May 2013

ECtHR, *T.M and C.M v. Moldova* (Application No. 26608/11), 28th of January 2014

ECtHR, *Rumor v. Italy*, (Application. No. 72964/10), 27th of May 2014

ECtHR, *Talpis v. Italy*, (Application. No. 41237/14), 2nd of March 2017

ECtHR, *Bălșan v. Romania*, (Application No. 49645/09) 23rd of August 2017

ECtHR, *Kurt. v Austria*, (Application no. 62903/15) 15th of June 2021

ECtHR, *Volodina v. Russia*, (Application No. 41261/17) 4th of November 2019

### Jurisprudence

#### European Court of Human Rights

ECtHR, *Selmouni v France*, (Application 25803/94), 28th of July 1999

ECtHR, *Z, and others v. United Kingdom*, (Application no. 29392/95), 10th of May 2001

ECtHR, *MC v. Bulgaria*, (Application No. 39272/98), 4th of March 2004

ECtHR, *Kontrová v. Slovakia* (Application No. 7510/04), 31st of May 2007

#### European Court of Justice

ECJ<sup>2</sup>, *NS and Others v. Secretary of State for the Home Department* (Case C-411/10 and C-493/10), 21st of December 2011

ECJ, *Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU), July 2016

<sup>2</sup> The European Court of Justice (ECJ) does not have a significant jurisprudence on the prohibition of torture and violence against women. Cases concerning these matters are typically brought before national courts or the ECtHR rather than the ECJ.



## RIGHT TO LIFE

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed

The right to life has historically been recognised in several human rights instruments, as well as in domestic law. It entails positive and negative obligations concerning Member States. Positive obligations include special protection measures towards vulnerable persons, such as victims of domestic violence, violence against women, and human trafficking. Positive obligations towards victims of violence against women include appropriate risk assessment by law enforcement.

The right to life is at stake when enforcing the principle of non-refoulement which is a guiding principle of asylum law. According to the European Court of Justice, women may be regarded as a social group under the directive 2011/95 and benefit from a refugee status if the conditions stated in this directive are which is the case if, in their country of origin, they are exposed because of their sex to physical or psychological violence, including sexual and domestic violence.

The right to life entails a mandatory provision of a certain level of health care services, including to pregnant women.

The right to life entails the prohibition of the death penalty in all circumstances.

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## RIGHT TO LIFE

### Relevant norms from international legal documents

Universal Declaration of Human Rights - Article 3

International Covenant on Civil and Political Rights  
- Article 6

European Convention on Human Rights  
- Article 2

Convention on the Rights of the Child (CRC)  
- Article 6

Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 - Rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU

Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection

UN General Comment No. 36 of the International Covenant on Civil and Political Rights on article 6: right to life

CEDAW General Recommendation No. 19: Violence Against Women (1992)

Protocols to the European Convention on Human Rights:  
Protocol No. 6  
Protocol No. 13

UN General Comment No. 36 on limitations to regulating voluntary termination of pregnancy

### Jurisprudence

#### European Court of Human Rights

ECtHR, A and B v. Georgia (Application No. 13255/07), 10th of May 2022

ECtHR, Opuz v. Turkey (Application No. 33401/02), 9th of September 2009

ECtHR, Y and others v. Bulgaria (Application No. 147/07), 22nd of March 2022

ECtHR, M.H. and others v. Croatia (Application No. 35060/17), 4th of April 2022

ECtHR (Grand Chamber), Kurt v. Austria (Application No. 168/2009/), 15th of June 2021

ECtHR, Ipek v. Turkey (Application No. 25760/94), 17th of February 2004

ECtHR, Sharifi and Others v. Italy and Greece (Application No. 16643/09), 21st of October 2014

#### European Court of Justice

ECJ, Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida (Case C-562/13), 18th of December 2014,

ECJ, Puppincck and others v. European Commission (Case C-418/18 P.), 19th of December 2019

ECJ, Commissaire général aux réfugiés et aux apatrides v. Mostafa Lounani (C-528/15), 31st of January 2017

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## HEALTHCARE

→ Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities

The EU Charter of Fundamental Rights upholds the right to healthcare. This right is connected to other fundamental rights such as life, equality, family, privacy and the right to be free from degrading and inhuman treatment. It is intrinsically linked to equality between women and men and opposed to male violence against women and girls, including trafficking for sexual and reproductive exploitation.

The right to healthcare includes mental health as an integral part of health, and this was recognised which Mental health is defined by the European Commission as a state of well-being in which individuals realise their own abilities, can cope with the stresses of life and contribute to their community. The Commission also states that mental illness is associated with many forms of inequalities.

Women are more likely than men to be confronted with external risk factors for mental health. These elements encompass familial and communal control rooted in patriarchy, detrimental customs, violence

and inequalities in the work sector, economic hardships such as unemployment and poverty, and male violence against women and girls, including sexual exploitation.

The right to healthcare includes reproductive rights. However, there are many barriers preventing women from accessing them, such as the criminalization of abortion, lack of sexual education, and accessible information regarding abortion, contraception, sexually transmitted infections or maternal health.

Obstetric and gynaecological violence constitutes an obstacle for women to access their right to healthcare. It is a widespread

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## HEALTHCARE

and often overlooked. It includes the practice of medical procedures without informed consent, physical, psychological, and verbal abuses, denial of anaesthesia, support, or respect for a woman's choices during childbirth.

In the context of migration, medical assistance provided at borders often does not account for the sex-specific needs of women and girls and there is an overall lack of specialist medical assistance to victims of rape.

## Relevant norms from international legal documents

EU Charter of Fundamental Rights

Article 24

Article 31

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) - Article 12

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

General Recommendation No. 24 Women and Health

Cairo Declaration on Population and Development (1994)

Report A9-0169/2021 of the Committee on Women's Rights

Resolution 2306 of the Parliamentary Assembly of the Council of Europe on 'Obstetric and Gynaecological Violence

## Jurisprudence

### European Court of Justice

ECtHR, *Pretty v. the United Kingdom* (Application no. 2346/02), 29th of July 2002

ECtHR, *Tysi c v. Poland* (Application no. 5410/03,) 20th of March 2007

### European Court of Justice

ECJ, *B.S.M. Geraets-Smits v Stichting Ziekenfonds VGZ and H.T.M. Peerbooms v Stichting CZ Groep Zorgverzekeringen* (Case C-157/99), 12th of July 2001

ECJ, *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* (Case C-34/09), 8 of March 2011

ECJ, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (Case C-157/15), 14th of March 2017

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## PROHIBITION OF SLAVERY AND FORCED LABOUR

1. no one shall be held in slavery or servitude
2. no one shall be required to perform forced or compulsory labour
3. trafficking in human being is prohibited

The prohibition of slavery and forced labour encompasses a wide array of human rights violations. Article 5 of the EU Charter of Fundamental Rights ,forbids human trafficking. Trafficking for the purposes of, forced marriage, sexual exploitation, such as in pornography or prostitution, and reproductive exploitation (including surrogacy) affects women, in particular migrant women, disproportionately.

In the context of trafficking, migrant women and girls can be coerced by perpetrators to engage in illegal activities such as selling drugs or illegal goods. As a result, victims of trafficking may be discouraged from seeking help by fear of repercussion. This is also the case for women and girls exploited in prostitution.

the rights granted to EU citizens workers and migrant workers, making them more vulnerable. Undocumented migrant women often fear negative consequences for their residency rights in the future, should they report situations of exploitation and abuse, hindering their access to justice.

In the context of labour, while there are safeguards in the EU to protect migrant women workers, nationally and at the EU level, there is still a distinction made between

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## PROHIBITION OF SLAVERY AND FORCED LABOUR



### Relevant norms from international legal documents

ILO Convention No. 29 - Forced Labour Convention (1930)

ILO Convention No. 105 - Abolition of Forced Labour Convention (1957)

United Nations Convention Against Transnational Organized Crime (Palermo Convention) (2000) - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Protocol to the ILO Convention on Forced Labour (2014)

European Convention on Human Rights (ECHR) (1950) - Article 4

United Nations Guiding Principles on Business and Human Rights (2011)

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979):

General recommendation No.38 on trafficking in women and girls in the context of global migration 2020

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA:

Article 2 / Article 4 / Article 11

Treaty on the Functioning of the European Union (TFEU) - Article 83, paragraph 1

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

European Parliament Resolution (2013/2115(INI)) 2014

UN's Bangkok Rules (2010) - Rule 66

UN Committee on Economic, Social and Cultural Rights (CESCR) - General comment NO. 23 2016 on the right to just and favorable conditions of work

The International Labour Organization (ILO) Minimum Age Convention (Convention No. 138)(1973)

Article 2 / Article 3 / Article 7

The ILO Convention on Domestic Workers (Convention No. 189) (2011)

Article 2 / Article 4 / Article 10 / Article 11

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Recital 3

Article 2 - Definitions

Article 4 - Sanctions against employers

Article 5 - Sanctions against third-country nationals

Council Directive 2004/81/EC (2004)

Recital 1

Article 1 - Object of the Directive

Article 12 - Non-punishment of victims

Council of Europe, Recommendation CM/Rec(2022)17 (2022)

### Jurisprudence

#### European Court of Human Rights

ECtHR, Siliadin v. France, (Application no. 73316/01), 16th of July 2005

ECtHR, CN and V v. France (Application no. 67724/09), 11th of October 2012

ECJ, Jany and Others v. Staatssecretaris van Justitie (Case C-268/99), 20th of November 2001

ECtHR, Rantsev v. Cyprus and Russia (Application no. 25965/04), 7th of January 2010

#### European Court of Justice

ECJ, Ciprian Vasile Radu REQUEST for a preliminary ruling under Article 267 TFEU (Case C-396/11), 29th of January 2013

ECJ, Česká spořitelna, a.s. v Gerald Feichter (Case C-419/11), 14th of March 2013

The project documents do not reflect the views of the European Commission.



## THE RIGHT TO NON-DISCRIMINATION

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

The right to non-discrimination derives from the principle of equality and is a core value of the EU. The list of grounds for discrimination in the Charter is non-exhaustive similarly to the ECHR. Discrimination must be considered from an intersectional point of view, with some women cumulating several discrimination factors in intersectional discrimination cases before international courts, sex is often erased as a grounds for discrimination, and only other grounds are considered, which is an issue for women's rights protection.

### Positive action:

Non-discrimination is not just about the duty of States to not discriminate, or even to prevent others from discriminating, but it is also about developing the conditions for equality, including measures of affirmative action, or positive action. The CEDAW committee has clarified that neutral treatment may be discriminatory, as it fails to address inequality between women and men.

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## THE RIGHT TO NON-DISCRIMINATION

### Relevant norms from international legal documents

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979):

Article 11, section d)

Article 2

General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW

General Recommendation No. 13 on Equal remuneration for work of equal value

ILO's 1958 Discrimination (Employment and Occupation) Convention

Treaty on the Functioning of the European Union (TFEU)

Article 2

Article 19

Article 157

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (EU) - Article 5

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (EU) - Article 7

International Convention on the Elimination of All Forms of Racial Discrimination

UN Committee on the Elimination of Racial Discrimination General Recommendation No. 35 on Combating racist hate speech

Convention on the Rights of Persons with Disabilities  
- Article 5, number 4

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services 2006/54/EC (EU)

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

### Jurisprudence

#### European Court of Human Rights

ECtHR, Kjeldsen, Busk Madsen and Pedersen v. Denmark (Application no. 5095/71; 5920/72; 5926/72), 7th of December 1976

ECtHR, Tkhelidze v. Georgia (Application no. 33056/17), 8th of October 2021

ECtHR, Gülbahar Özer and Others v. Turkey (Application no. 64406/09), 8th of October 2018

#### European Court of Justice

ECJ, Kalanke v Freie Hansestadt Bremen (Case C-450/93), 17th of October 1995

ECJ, Marschall v Land Nordrhein-Westfalen (Case C-409/95), 11th of November 1997

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## THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

→ Everyone has the right to respect for his or her private and family life, home and communications.

The right to private and family life has been and is often interpreted in discriminatory ways, with *de facto* equality of all family units before the law yet to be accomplished. Women have historically not been granted equal rights as members of families, creating a material and symbolic dependence of women in relation to men which still echoes in today's laws and legal interpretations.

The right to family life is often at stake in the context of migration. Many women face administrative and financial barriers preventing from accessing their right to family reunification. Family reunification is a right under Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In the context of family reunification, it is important to consider the issue of legal status. Many women and girls are maintained

into situations of violence because they lack an independent legal status following their migration journey and are therefore prevented from seeking support. This can concern victims of child marriages and other forms of forced marriages, as well as victims of domestic violence.

Forced sterilisation of women is a violation of the fundamental rights of respect for private and family life, often targeting women with disabilities or racial minorities such as Roma women.

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## THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

### Relevant norms from international legal documents

Universal Declaration of Human Rights – Article 16

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women):

Article 16

General Recommendation No. 21 - Equality in marriage and family relations

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Council of Europe Recommendation on protecting the rights of migrant, refugee, and asylum-seeking women and girls

Directive 2004/38/EC (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)

Council Directive 2003/86/EC (on the right to family reunification for third-country nationals)

Convention on the Rights of Persons with Disabilities – Article 23

Nelson Mandela Rules - Standard Minimum Rules for the Treatment of Prisoners:

Rule 28

Rule 29

Rule 45

### Jurisprudence

#### European Court of Human Rights

ECtHR, Pajić v. Croatia (Application no. 68453/13), 23rd of May 2016

ECtHR, Sen v. The Netherlands (Application no. 31465/96), 21st of December 2001

ECtHR (Grand Chamber), Jeunesse v. The Netherlands (Application no. 12738/10), 3rd of October 2014

ECtHR (Grand Chamber), Biao v. Denmark (Application no. 38590/10), 24th of May 2016

ECtHR, Tanda-Muzinga v. France (Application no. 2260/10), 10th of July 2014

ECtHR, N.B. v. Slovakia (Application no. 29518/10), 12th of June 2012

#### European Court of Justice

ECJ, Ruiz Zambrano v Office national de l'emploi (Case C-34/09), 8th of March 2011

ECJ, European Parliament v. Council of the European Union (Case C-540/03), 27th of June 2006

ECJ, Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform (Case C-127/08), 25th of July 2008

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## HUMAN DIGNITY



→ Human dignity is inviolable. It must be respected and protected.

The foundational principle of human dignity is enshrined in the Charter's Preamble and as the 1948 Universal Declaration of Fundamental Rights' preamble. Several international, regional and national instruments, as well as case law and practice recognise the central role of human dignity. At EU level, it is enshrined in the constitutions of over 20 Member States.

The dignity of the human person is not only a fundamental right in itself but also constitutes the basis of fundamental rights, resulting in the fact that the other rights in the Charter cannot be used to harm a person's dignity. The principle of safeguarding human dignity protects everyone from degrading or inhuman acts that could reduce them to the status of an object.

Since human dignity can be applied to all EU policy areas including equality, security, prevention of torture, privacy, development of personality, fair employment, and decent housing, human dignity is also strictly connected to equality between women and men and women's rights. According to the CEDAW, „discrimination against women violates the principles of equality rights and respect for human dignity“.

The Council of Europe Convention on Action against Trafficking in Human Beings frames human trafficking as a violation of human dignity.

In the context of asylum law and procedures, it is essential to recognise violence against women and girls as a violation of women's human dignity, based on which the victims should be granted asylum. Upholding human dignity should be central to EU policies regarding migrants, notably in the context of reception conditions. This is particularly relevant for women, as the lack of provision of specialised assistance in reception centres and the lack of specific protection can amount to violations of their human dignity.

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### Relevant norms from international legal documents

#### Universal Declaration of Human Rights (UDHR) (1948)

Article 1: "All human beings are born free and equal in dignity and rights."

Article 3: "Everyone has the right to life, liberty, and security of person."

#### International Covenant on Civil and Political Rights (ICCPR) (1966)

Article 10(1): "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

#### UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)

#### Convention on the Rights of Persons with Disabilities (CRPD) (2006)

#### International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (2006)

#### International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990)

#### Convention on the Rights of Indigenous Peoples (UNDRIP) (2007)

#### International Labour Organization (ILO) Conventions

#### Convention on Cybercrime (Budapest Convention) (2001)

#### Declaration on the Right to Development (1986)

#### International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)

#### Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (2011)

#### EU Fundamental Rights Agency and Council of Europe Handbook on European Law relating to asylum borders and immigration 2020

### Jurisprudence

ECtHR, *Pretty v. the United Kingdom*, (Application no. 2346/02 ), 29th of April 2002.

ECtHR, *S.A.S. v. France*, (Application no. 43835/11), 1st of July 2014.

ECtHR, *Bensaid v. the United Kingdom*, (Application no. 44599-98), 6th of February 2001.

CJEU, *Digital Rights Ireland Ltd. v. Ireland*, (Case C-293/12 and C-594/12), 8th of April 2014.

ECtHR, *X and Others v. Austria*, (Application no. 19010/07), 19th of February 2013.

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## RECOMMENDATIONS TO MEMBER STATES

1. Member States should ensure that migrant, refugee, and asylum-seeking women and girls do not face discrimination on any grounds.
2. Member States should adopt the necessary measures to enhance the ability of undocumented migrant women and girls to access their fundamental rights, and for those of them who are victims of violence against women or trafficking in human beings, to report the crimes without fear of removal.
3. Member States should adopt a child rights-based approach to migrant, refugee, and asylum-seeking girls, which takes account of the age and specific vulnerable situations and needs of girls.
4. Migrant, refugee, and asylum-seeking women and girls must be provided with relevant and accessible information and advice in a way and in a language that they can understand. This should also cover the right to interpreters, including sign-language interpreters, legal professionals, and intercultural mediators.
5. Member States should ensure the deployment of specific protection mechanisms, including places in women-only accommodation facilities (or with at minimum separate rooms and bathrooms for women and men), dedicated safe spaces for women and girls, and spaces for confidential interviews with service providers alongside the presence of psychosocial support and translators.
6. Member States should ensure migrant women's access to legal advice and free legal aid which should be granted, under the conditions provided for by internal law, in order to support migrant, refugee, and asylum-seeking women and girls who are victims of any forms of violence against women and trafficking in human beings, through criminal, administrative and civil proceedings, as appropriate, including the pursuit of compensation claims and legal redress against the perpetrators.
7. Member States should tackle administrative barriers to facilitate access to health services: simplifying, translating, and diffusing rules on the process for accessing care, removing expensive or unnecessary requirements, and proactively challenging the impact of cultural barriers will facilitate access of migrant women and girls to the health services they need, including sexual and reproductive health services.

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## RECOMMENDATIONS TO MEMBER STATES

8. Member States should ensure that the protection provided by legal treaties, notably the Istanbul Convention, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Council of Europe Convention on Action against Trafficking in Human Beings, is well known to all those responsible for dealing with migrant women and that these treaties are efficiently implemented.
9. Member States should fund awareness raising campaigns on migrant and refugee women's rights, including as regards access to education and work, participation in social, economic, and cultural life, protection against all forms of violence against women, domestic violence, and access to justice.
10. Member States should establish mechanisms to ensure the systematic consultation of migrant and refugee women's organisations and organisations that represent these women in the designing and implementation of policies that concern them.
11. Member States should integrate the principle of equality between women and men into the training of professionals and public officials at all levels involved in the design and implementation of integration programmes. Furthermore, these trainings must address all forms of violence that affect migrant women and girls disproportionately, such as sexual exploitation and prostitution, trafficking child marriage, sexual violence, domestic violence, FGM, and traditional harmful practices.
12. Member States should Increase the collection, analysis and dissemination of sex-disaggregated data and statistics on violence against migrant women and girls.

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The report used the following terminology to shed light into the pervasive power relations hampering women and girls' enjoyment of their rights and fundamental freedoms, thus perpetuating their unequal position in all areas of society. Furthermore, this terminology provides a framework for understanding women's structural historical oppression resulting from patriarchal societies: women have systematically been set aside and absent on the international law discourses. Their rights have consistently been denied. We encourage decision-makers to use these definitions and concepts when working on legislative texts and policies.

### Asylum-seeking women

Under Art.14 of the Universal Declaration of Human Rights, everyone has the right to seek and enjoy in other countries asylum from persecution. An asylum-seeker is an individual who has fled their country and is seeking protection from persecution and serious human rights violations in another country, but who has not been legally recognised as a refugee yet.

This includes the women waiting for their application results, those who express the intent to apply for international protection, those who have seen their application rejected and those possessing an expulsion order. In these different situations, their undocumented status can last for an extended period which hinders these

women's access to certain rights, protection and services (e.g., healthcare or maternity services) and puts them at high risk of male violence and retraumatisation, sexual and labour exploitation and trafficking, marginalisation and social exclusion.

### Coercive control

Coercive control refers to a repeated or continuous controlling, oppressive, dominating or restraining behavior towards another person within the context of an interpersonal relationship, with negative effects on the victim. Coercive control is primarily committed by men against women within a context of power. As such, it represents an integral part of the continuum of male violence against women and girls and ought to be addressed within

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this framework. While coercive control goes beyond psychological violence and can be associated with other forms of violence against women, it should not be used to mask, dismiss or prevent the qualification and prosecution of said forms of violence as such.

### Domestic violence

According to the Istanbul Convention, it refers all acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim, including coercive control of the victim through repeated acts of intimidation, threats, humiliation and others. In this document, we also consider that domestic violence encompasses verbal violence that should be dissociated from psychological violence.

### Due diligence

Requires States to take a level of care or activity in the exercise of their duties to ensure the enjoyment of human rights, and to act in good faith. For instance, State parties to CEDAW must act with due

diligence, which means that States are accountable for all discrimination against women committed by State and non-State actors, in both private and public spheres, including preventing, prohibiting, identifying, providing redress, imposing sanctions for discrimination, as well as promoting women's rights and accelerating de facto equality.

### Femicide

Expanding on the Latin American Model Protocol for the investigation of gender-related killings of women, femicide in this document is defined as “the murder of women because they are women, whether it is committed within the family, a domestic partnership, or any other interpersonal relationship, or by anyone in the community [or wider society], or whether it is perpetrated or tolerated by the state or its agents”. Femicide exists in direct and indirect forms, with different categories, such as murder of women as a result of intimate partner violence; torture and misogynistic slaying of women; killing of women and girls in the name of honour; targeted killing of women and girls in the context of armed conflict; dowry-related killing of women; killing of aboriginal and indigenous women

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and girls because of their sex; female infanticide; genital mutilation-related deaths; accusations of witchcraft; other types of femicide connected with gangs, organised crime, drug dealers, and human trafficking, killing of women in prostitution, forced suicide, etc. Globally, killings by intimate partners or family members make up 55 % of all femicides.

### Forced labour

All work or service which is exacted from any person who, under any circumstances, has not offered themselves voluntarily.

### Forced marriage

Forced marriage is a form of violence against women that entails serious violations of fundamental rights and in particular of women's and girls' rights to physical integrity, physical and mental health, sexual and reproductive health, education, private life, freedom and autonomy. Neither culture, custom, religion, tradition nor so-called "honour" can justify such violations.

### "Honour" crime

Any act whereby a family or community member kills, maims, burns, injures, tortures,

or harms a woman or a girl with the aim of restoring family "honour" and reputation, on the ground that, by her life choices, her desire for emancipation, her refusal of marriage, her sexual, social or romantic life, her sexual orientation, or any particular behaviour she "has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour".

### Intersectional discrimination

Intersectionality describes the unique forms of discrimination, oppression and marginalisation that can result from the interplay of two or more grounds of discrimination, such as sex and race, sex and migration status or migration status and religion, for example. Migrant, refugee and asylum-seeking women and girls in Europe face persistent inequalities as well as specific barriers to protection and enjoyment of their fundamental rights. As a group they are at the intersection of multiple systems of structural oppression (patriarchy, colonialism, and capitalism) and, as a result, they face multiple forms of violence (male violence, racism, exclusion, administrative violence, etc.). Among migrant women, some belong to other discriminated groups

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(women with disabilities, lesbian women, underage girls, single mothers, etc.).

### Legally binding document

A document that carries formal legal obligations for the Parties by which they are bound. This includes Treaties, Conventions, EU directives EU Charter, etc.

### Migrant women

Encompasses migrant, refugee, and asylum-seeking women. According to the UN's International Organization for Migration, a migrant woman is an umbrella term, not defined under international law, reflecting the common understanding of a person who moves away from her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. We follow this inclusive definition, which considers that the term migrant covers all forms of movements, including fleeing from war, persecution and disasters linked with the climate crisis.

### Non-binding document

A document that does not carry formal legal obligations for the Party. However, it can

indicate an emerging rule of international or European human rights law. This includes Recommendations, EU resolutions, EU agency or EU institution reports, etc.

### Non-State actors

The United Nations Security Council defined non-state actors as “any individual or entity not acting under the lawful authority of the State” (Resolution 1540, 2004).

### Non-State Torture (NST)

It is torture that is committed by non-state actors, in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent individuals, groups and gangs, dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, in humanitarian and civil unrest, for example.

### Pornography

From a general perspective, pornography is defined as the image or representation of one or several persons engaged in real or simulated sexually explicit conduct. Since the mid-2010s, online platforms for sharing

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sexual content have appeared leading to the massification of commercial pornography. In the pornography industry, pornographers recruit, entice, or obtain people – mostly women – for the purpose of photographing, filming, or recording a live commercial sex act. The business of pornography is a system of oppression and sexual exploitation, which plays a direct part in the continuum of violence against women and girls as well as the prevention of equality between women and men. The overarching similarities between pornography and traditionally recognised forms of prostitution, in terms of recruiting techniques, methods, and consequences on the victims, lead this report's authors to consider pornography as filmed prostitution.

### Prostitution

Prostitution is the purchase of a sexual act, which can be defined as the solicitation, acceptance or obtainment of a sexual act from a person in a situation of prostitution in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit. To avoid the circularity of this definition, we chose to replace “from a person in a situation of prostitution” with “from another

person”. We also acknowledge and highlight that the majority of persons in prostitution are women and girls.

### Reproductive Exploitation

In this document, the term “reproductive exploitation” is used with the understanding that there is no agreed EU-level or international legal definition of it. Reproductive exploitation shall include the prohibition of abortion, forced abortion, forced reduction of embryos, forced pregnancy, surrogate motherhood, and surrogate egg retrieval, as practices rooted in inequality between women and men and a manifestation of structural discrimination against women.

### Sex disaggregated data

Any data on individuals that is cross-classified by sex, presenting information separately for women and men, girls and boys, allowing for measurement of differences between women and men on various social, cultural, and economic dimensions. When data is not disaggregated by sex, it is more difficult to identify existing and potential inequalities. Statistics on violence against women or equality between women and men rely on

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these sex-disaggregated data to reflect the realities of the lives of women and men and lead to evidence-based policies to reduce existing gaps.

### Sexual Exploitation

In this document, the term “sexual exploitation” is used with the understanding that there is no agreed EU-level or international legal definition of it. Sexual exploitation shall include prostitution, as per the Palermo Protocol, as well as pornography, rape, and other forms of sexual violence, FGM, forced marriage, etc. It is generally understood as the abuse of vulnerabilities and/or differential power and/or trust, to obtain acts of a sexual nature.

### Substantive equality or *de facto* equality

Substantive equality goes far beyond creating formal legal equality for women (where all are equal under the law) and means that governments are responsible for the impact of laws. This requires governments to tailor legislation to respond to the realities of women's lives. Striving for substantive equality also places a responsibility on governments to implement laws, through governance that takes into account the

women's rights perspective and functioning justice systems that meet women's needs. Substantive equality is a concept expressed in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It recognises that because of historical discrimination, women do not start on an equal footing to men.

### Victim

In the context of this document, which constitutes a legal analysis, victims are understood as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of their fundamental rights, through acts or omissions that violate laws operative within any given States, including those laws proscribing criminal abuse of power.

### Violence against women and girls

The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

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Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, and forced prostitution;
- (c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

The Istanbul Convention defines gender-based violence against women as violence that is directed against a woman or a girl because she is a woman or that affects women and girls disproportionately. It is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of violence that result

in or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

For the purpose of the report we chose to use the terminology “violence against women and girls” and/or “male violence against women and girls” to address the important sex-specific aspect of this type of violence.

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