

Shadow report for the first baseline evaluation procedure on Germany -

SOLWODI Deutschland e.V. on the situation of migrant and asylum-seeking women and the implementation of the Istanbul Convention in Germany

[SOLWODI Deutschland e.V.](#) was founded in 1987 as a registered association in Germany. SOLWODI stands for SOLidarity with WOMen in Distress. Purpose of the association is to support migrant women in distress through psycho-social counselling. Our clients are migrant women victims of human trafficking, forced marriage, domestic violence and other forms of gender-based violence. Our clients are EU citizen migrant women or women from third countries, such as asylum seekers. SOLWODI has 19 help centres and has seven sheltered housings in six German federal states.

SOLWODI welcomes that Germany has implemented the Istanbul Convention on 1st February, 2018. Based on our experience, we would like to point out to the lacking implementation of certain articles in this shadow report. This shadow report therefore describes the implementation of the Istanbul Convention by focusing on the situation of our SOLWODI clients; i.e. migrant and asylum-seeking and refugee women. We make references to our own projects, speak about our practical experience and also refer to important government documents and also publications. In particular, insights from the current COVID-19 pandemic reveal even more how several rules laid down in the Convention are not met.

Article 4 para. 3 - Fundamental rights, equality and non-discrimination

As a NGO advocating for the rights of migrant and asylum-seeking women in distress, we especially welcome that the Convention is to be applied in a non-discriminatory manner. The non-discriminatory approach laid down in Art. 4 para. 3 Istanbul Convention is not fully implemented in Germany. Many of our clients face problems in accessing women shelters, if they do not have a legal residence permit, as the e.g. need to fear being reported by an immigration office (see section on Art. 23 for more information). Another example is the lacking access to restraining or protection orders in refugee shelters, which we describe more in detail under Art. 53 and the access to support services, described in the section under Art. 20. In parallel, EU citizens face a variety of problems in having equal access to the provisions of the Istanbul Convention in comparison to women from the German majority society (see section on Art. 30 on compensation for more information). **SOLWODI calls on the German government to fully put the principle of non-discrimination into practice for migrant, asylum-seeking and refugee women that are victims of gender-based violence (GBV).**

Article 8 – Financial resources

In order to guarantee the right of affected women to low-threshold, specialised and barrier-free assistance, a specialised assistance system must exist that is financially secured (Article 8 in conjunction with 22-26). The obligation extends to the funding of relevant NGOs - such as SOLWODI - that implement measures to combat gender-specific violence as defined in the Convention (Rabe & Leisering 2018). In order for SOLWODI to provide for support to migrant women in distress, **Germany needs an improved financing of the regulatory system, whereby e.g. more women shelters are established** (see section on Art. 23 for more information) **and more per-**

sonnel costs with permanent (!) contracts are financed (see section on Art. 22 for more information).

Already in 2019, the Federal Ministry for Families, Senior Citizens, Women and Youth (BMFSFJ) has promised to provide 6,1 million Euro for a nation-wide funding programme *Gemeinsam gegen Gewalt an Frauen/Together against violence against women* (Drucksache 19/7816). From 2020, the available funds can be used in accordance with the funding guidelines, whereby in addition to "non-investment measures" it is also possible to apply for "investment measures". Both the "investment" and "non-investment" fund refer to the Istanbul Convention.

With the investment part of the federal funding programme *Gemeinsam gegen Gewalt an Frauen*, the Federal Ministry of Women's Affairs is funding construction measures to expand counselling centres and women's shelters between 2020 and 2023. The BMFSFJ has made a call for projects financing investment measures for sheltered housing, with a innovative component. SOLWODI welcomes that the investment programme considers target groups that have not yet been sufficiently reached, such as our clients. However, no information is provided on the maximum funding amount the BMFSFJ will actually finance a individual women sheltered housing with in total (BMFSFJ 2020a). Although it is highly important that the BMFSFJ funds the new construction/renovation of shelters, the investment measure is lacking the **financing of furniture and equipment that are suffering from severe wear and tear. SOLWODI recommends that this type of financing is considered in the next programme cycle.**

The second pillar comprises the funding of innovative measures to support women affected by violence. The innovation programme has already started in 2019 with the funding of five federal projects. The federal innovation programme is designed to run until 2022. In total, 5 million funding for innovative projects per financial year are planned, which are subject to the approval of the decision of the Federal Budgetary Legislator (BMFSFJ 2020b). SOLWODI welcomes the funding of the BMFSFJ, but finds it non-transparent. E.g. the website of the federal support programme has still not listed the projects that have received funding (status August 2020) (BMFSFJ 2020c). The guidelines do not clearly state the final date one can apply for funding and also does not give any information on a maximum project running period (BMFSFJ 2020b). SOLWODI considers the innovative part of the programme problematic, as the institutions that already cover such offers through regular work are likely to be excluded from funding. Two of our past applications to the BMFSFJ with the SOLWODI target group (highly traumatised migrant and asylum-seeking women) have already been rejected by the BMFSFJ in recent years. Innovative approaches are all well and good, but they carry the risk of 1) causing additional work for already scarce human resources and 2) not benefiting the target group. Ultimately, this often means that the actual everyday work that benefits our SOLWODI clients - meaning psycho-social counselling work - often only constitutes a marginal part of project work. Further, it is critical that the BMFSFJ states that the annual financial funding is subject to the decision of the Federal Budgetary Legislator and is limited to the calendar year 2022 (Ibid.). **The government needs to commit to a fixed annual budget and also provide for a long-term financing of on-going programmes, which are not too innovative as such, in order to meet the provisions of this Article of the Istanbul Convention.**

What is urgently missing in all government programmes, is the **financing of supervision costs**. Findings from our EU REC-funded project [Co-Creating a Counselling Method for Refugee Women Gender-Based Violence Victims \(CCM-GBV\)](#) show how counsellors supporting gender-based victims are in danger of suffering from *secondary traumatisation* or *compassion fatigue*. The financing of supervision as a form of self-care is of utmost importance as it aims at maintaining their fitness for work and protecting their own health. Early recognition is thereby decisive in order to prevent burn out (Wells et al. 2019; Lilja 2019; Lilja et al. 2020). Supervision is costly, but necessary in order for counsellors to be able to support gender-based violence victims professionally. **This is something that needs to urgently be considered in the funding programmes of the BMFSFJ.**

Further framework conditions need to be changed in order to hinder *secondary victimisation* of gender-based violence victims, such as a **better personal equipping of the judiciary and faster court procedures and judgments** (for more information see section on Art. 49) (Lehmann et al. 2020).

Article 9 – Non-governmental organisations and civil society

Findings from our CCM-GBV project clearly show how much specialised knowledge NGO counsellors have and that GBV victims are more likely to open up to NGO counsellors than e.g. police officers or lawyers. NGOs - such as SOLWODI - play a big role in the identification of GBV victims and in offering immediate and long-term support for migrant women victims of gender-based violence. Based on our experience, NGOs can be in a better position to reach and identify potential clients than authorities. Many asylum seekers have experiences of authorities being corrupt and inefficient, even abusive. The clients perceive NGO counsellors as more neutral, and a relationship of trust, a requisite for counselling, can be more easily formed (Lilja 2019; Lilja et al. 2020). Therefore, **there must be enough resources for NGOs providing such specialised services** (for more information see section on Art. 22).

Further, the outcomes of the national report on current practices in the national criminal justice system in our [RE-JUST](#) project shows that most low-threshold support is mainly provided by NGOs and specialised help centres (Lehmann et al. 2020). We however do not always see ourselves recognised in our expertise, as we e.g. are not involved in the implementation of comprehensive government policies. E.g. we notice a great problem in finding cooperation possibilities with stakeholders e.g. from police or justice. In EU projects, we are e.g. required to cooperate with so-called Law Enforcement Agencies under certain types of EU programmes (e.g. ISF Fund, Horizon 2020). It is very hard for NGOs to get into contact with these stakeholders, win them over as project partners and also have chances to receive EU funding, as they are also often timely restrained due to a lack of personnel resources. **We recommend that the German government needs to actively enable personnel resources in the police and justice sector in order to 1) enable multi-disciplinary cooperation in GBV cases and 2) also enable NGOs to actually have a chance to receive funding from e.g. the above mentioned EU programmes.**

Article 10 – Co-ordinating body

SOLWODI welcomes that the co-ordinating body has been set up at the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*). SOLWODI looks forward to see first monitoring results by the German Institute for Human Rights. As the work has so far not produced any public results, SOLWODI is unable to assess in how far this Article has actually been put into practice in Germany. **SOLWODI would welcome to see transparent monitoring reports by the German Institute for Human Rights as soon as possible and hopes that NGOs targeting migrant women such as ours will be involved in the monitoring process.**

Article 11 – Data collection and research

It is generally problematic to make statements on the prevalence of gender-based violence crimes in Germany on the basis of official police data - the so-called *Hellfeld* - in several respects. Common problems regarding the *Polizeiliche Kriminalstatistik* (PKS)/Police Crime Statistics must be taken into account (e.g. selection in the course of the criminalisation process; initial statistic) (Wells 2020). Although, the German Federal Police Office/*Bundeskriminalamt* (BKA) issues specific situation reports e.g. on intimate partner violence (BKA n.d.), no such reports are available for the GBV crimes of female genital mutilation (FGM), psychological violence, stalking, sexual violence, forced marriage, forced abortion and forced sterilisation as well as sexual harassment although cases have been reported in 2019 (BKA 2020). With regard to the other forms of GBV, some of the violence forms e.g. sexual violence are also only described in the situation report on intimate partner violence, without taking into account cases of sexual crimes outside of a partnership (BKA 2019). Therefore, the German government - in particular the BMFSFJ and the Federal Ministry of Interior (BMI)- should fund dark figure research studies - *Dunkelfeldstudien* - , as they can give some more insight into the prevalence of GBV in Germany (Wells 2020) (for more information see section on Art. 27). The German government has only financed one large research project on the situation of gender-based violence victims in Germany: *Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland* by Müller et al. (2004). This research project is outdated and does not contain any information on the implications of the implementation of the Istanbul Convention on female victims of gender-based violence in Germany. **In order to improve data collection and the development of evidence-based policies, adequate resources for research, data collection and monitoring must be made available in Germany. A nationwide representative study on the effects of the Istanbul Convention in Germany for nationals, EU citizens and third-country nationals needs to be funded by the government.**

Article 13 – Awareness-raising

During the COVID-19 lockdown in Germany, the BMFSFJ called the online initiative [Stärker als Gewalt](#) (stronger than violence) into being. The website e.g. informs about available support services. Within the *Stärker als Gewalt* initiative, the BMFSFJ started a campaign in 26,000 supermarkets advertising for the campaign under the slogan *Zuhause nicht sicher?* (Not safe at home?) at counters (BMFSFJ 2020d). At this point, it must be stressed that both the initiative and campaign do not target illiterate women or women that lack German language skills. Further, to visit the *Stärker als Gewalt* homepage anonymously seems a bit vary, considering that many of our clients that are victims of domestic violence are under constant control of their partner/husband/brother etc. and will not easily be able to access the laptop/computer/mobile

and calling-up the webpage without him/them noticing it (BMFSFJ 2020e). Both campaigns therefore seem to target national women and migrant and asylum-seeking women are left behind. **There is not only a need to direct national campaigns to illiterate and less literate women, but also to finance awareness-raising campaigns and prevention projects by NGOs, e.g. in schools** (see section on Art. 8 for more information).

Article 15 – Training of professionals

Training of professionals, in particular on multi-agency work, is still lacking in Germany. The problem is that there is lack of personnel resources e.g. in police or justice, on the one hand (see section on Art. 9 for more information), and the lack of mandatory training, on the other hand. **It is of utmost importance that the relevant ministries - e.g. BMFSFJ, BMI and BMJV (Federal Ministry of Justice) - make it compulsory that given staff are trained on GBV issues at least once a year.** Special focus not only needs to be placed on supporting different victims of GBV, but also how stakeholders can avoid causing *secondary victimisation*, as victims might experience this type of violence to be more painful (Wells et al. 2019). Further, training needs to be provided for professionals in identifying victims of GBV in a trauma-informed manner (Lilja 2019). SOLWODI often offers trainings in the course of EU-projects, which are funded trainings. **The BMFSFJ, BMI and BMJV should also make available funding for national NGOs to carry out trainings for stakeholders that are important in providing support services to victims of GBV in order to foster and improve multi-agency cooperation.**

Article 16 – Preventive intervention and treatment programmes

State Parties of the Istanbul Convention are required to establish perpetrator programmes as laid down in Art. 16 of the Istanbul Convention. Germany has a nation-wide perpetrator programme in place: Federal Association for Work with Perpetrators of Domestic Violence (*Bundesarbeitsgemeinschaft Täterarbeit Häusliche Gewalt – BAG TäHG – e. V.*) in Germany. Perpetrator programmes are lacking, because they only deal with a very small number of men. These programmes have only recently started to include culture and ethnicity into the relevant programmes. With regard to establishing perpetrator programmes for migrant and asylum-seeking men, integration aspects should be implemented into perpetrator programmes, as migrant men are e.g. not aware of the given host country legal system. They will also need assistance in establishing a new social system in the country of destination to e.g. avoid isolation. The topic of children, whereby men can be engaged in exchanging ideas about child up-bringing etc., can be an icebreaker topic (Wells et al. 2019). Research shows that perpetrator programmes lack to take different forms of GBV into account (not only sexual and domestic violence, but also e.g. psychological violence or crimes in the name of so-called honour) as well as female perpetrators of GBV (i.e. especially psychological violence) (Wells 2020). **The German government should not only sponsor perpetrator programmes focusing on men and domestic and sexual violence, but also include other forms of GBV crimes and female perpetrators in order to be able to prevent all types of GBV crimes from all type of perpetrators.**

Article 20 - General support services

Evidence from our CCM-GBV project shows that asylum-seeking women rarely have access to support services. Migrant and asylum-seeking women that are GBV victims are often hindered in

accessing general support services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment due to their given residence permit (see section on Art. 60 for more information). The most vulnerable group of female victims of GBV are migrant and asylum-seeking women, especially illiterate women. They often cannot understand papers/leaflets/flyers with phone numbers e.g. of helplines or general support services. Many only have limited knowledge of German, hardly have access to the internet and often do not know about how to access support services. These women need to be accompanied to general support services by a NGO counsellor, which proves time and human resource intense (see sections on Art. 8 and Art. 22 for more information). Further, our project results indicate that support services in line with the Istanbul Convention are mainly offered by NGOs and that there is a lack of services for refugee women victims of violence, including the lack of women's shelter places for asylum-seeking and refugee women, lack of medical services and poor access to psychological treatment (Lilja 2019; Lehmann et al. 2020; Lilja et al. 2020).

Women from third countries, are hindered in accessing general support services. Women without a residence permit, hardly have access to the health services. According to the Asylum Seekers Benefits Act (AsylbLG), female asylum seekers that are GBV victims are only allowed to receive medical care in cases of acute illness and pain as well as pregnancy within the first 15 months (§ 1 Abs. 1 Nr. 5 i. V. m. §§ 1a und 4 AsylbLG). If they are aware of it and have access to it, they can be cared for in alternative structures organised by civil society, which work mainly on a voluntary basis and cannot replace the state health system. There are consultation hours in the reception centres and also many local programmes offering medical treatment on a voluntary basis (Gesundheit-Geflüchtete n.d.). There are also several programmes for people without legal residence status available (Bundesarbeitsgruppe Gesundheit/Illegalität 2017) (s. also section on Art. 22). After these 15 months, asylum seekers come into the regular health care system and receive social welfare benefits in line with §2 AsylbLG. The national working group of psychosocial centres for refugees and torture victims (*Bundesweite Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer* [BAfF]) criticises that although the EU Reception Directive entered into force in Germany on 20/07/2015 implicating that each asylum seeker's medical and psychological health needs must be reviewed on a case-by-case basis, in practice this is hardly done in Germany. Even in cases in which a special neediness is determined, entitlements to i.e. psychotherapy are neglected on the basis of appeal of official discretion by the social welfare office in line with §6 I AsylbLG (BAfF n.d.). Even if female asylum-seeking GBV victims are entitled to therapy, the problem remains that GBV victims are placed on a long waiting list for therapy, which has especially been intensified since the so-called refugee crisis in particular as regards to trauma therapy. Further, there are only a handful of therapists available, there are long waiting times and it is difficult to find native-speaking therapists. Generally speaking, hardly any therapies are financed. The SOLWODI counsellors i.e. sometimes accompany clients to NGOs or similar, who have set up small trauma programmes in bigger cities in order to cover the demand. But because the demand for trauma therapy is so high, it is also problematic to get places in these trauma programmes.

Further, the lack of common language with medical/psychological service providers can make it challenging for refugee women to receive proper medical support. GBV victims find it difficult to

access regular German health services for cultural reasons (i.e. they feel ashamed of being a victim, due to not wanting to talk about e.g. sexual violence especially if the practitioner is a man) or have language barriers in accessing health services as such as they cannot inform themselves independently due to lacking German skills or cannot explain their symptoms to the doctors and/or cannot understand the doctors' consultations. Most women prefer to talk about their medical issues to a female doctor (Lilja 2020). It generally became more difficult for our SOLWODI clients to have access to health care during the COVID pandemic, as doctors are not able to access refugee shelters due to the quarantines or doctor offices also had to close because of Corona cases. Oral information e.g. in refugee shelters could not be provided as external counsellors were not allowed to enter the refugee shelters.

Monetary training assistance is divided into material assistance for a vocational training and for studying ([BAföG](#) and [Berufsausbildungsbeihilfe](#)) and also additional support measures to encourage a vocational training (such as assisted training or vocational training accompaniment support). The access to the different support measures depends on the residence permit and the duration of time already spent in Germany. Refugees with a permanent residence status normally have full access, where as in cases of humanitarian residence permits (i.e. §25 AufenthG) as well as persons with a documentation as asylum seeker (the so-called *BüMA*) and persons with temporary suspension of deportation status (*Duldung*) the access is not always given. When wanting to complete a company-based vocational training or an internship, GBV victims need to receive an approval by the immigration office, as it is considered to be a form of employment. Taking part in a company-based vocational training is only possible after having resided in Germany for three months. An approval by the immigration office for going to school or starting a degree at a university is not needed (Voigt 2016). Counsellors and also the women themselves complain about their limited access, whilst the asylum seeking process can take years. As the full access to training is prohibited, they are not able to fully integrate themselves, learn the language and/or a job to build a perspective for themselves. It has also been criticised that the AsylbLG makes it neither possible to take part in trainings, other integration measures nor travel and interpreters can be financed by the AsylbLG. This situation can also cause GBV victims to experience *secondary victimisation* (Wells et al. 2019).

As long as asylum-seeking women GBV victims are in the asylum procedure, they have no access to the labour market, as they are not allowed to work. Once having received a residence permit, every residence title must show, if an employment is permitted. That also counts for a tolerance status (*Duldungsstatus*), the arrival papers or the temporary residence permit. The access to the labour market is restricted and dependent on the decision of the immigration office and the job center. If this is the case, "employment permitted" is written on the papers or the chip card of the person. Other residence titles, i.e. the permanent residence permit, the residence permit for family reunification and the residence permit for international protection beneficiaries, legally allow the residence holders to work independently or dependently (Voigt 2016). People with a subsidiary protection/*Duldung* have the possibility to become self-employed only after living in Germany for four years (§32 II Nr. 5 BeschVO). The practical implementation of these rights to access employment however poses problems. The residence permit is temporary and the exact duration of residency unknown, which is problematic for both employers and training facilities,

as they cannot plan their staff accordingly. Further, the clients are often traumatised or in an unstable situation, so that it is quite often difficult for them to take up an employment or a vocational training as such.

Female EU citizens that are victims of GBV also face problems in accessing general support services. In particular, dealing with Roma clients requires intercultural counselling and special expertise of the situation in which the women find themselves in their home country. The SOLWODI counsellors understand the cultural background, educational level and living situation of the women, as this is the only way they can conduct personal and trusting counselling sessions. In most cases, questions regarding residence status, alimony and health insurance, maintenance and custody etc. must be clarified. In order to enforce legal claims, legal assistance and representation are arranged by SOLWODI employees. Although European clients have statutory health insurance in their home countries, they often have not received an European Health Card (EHIC) from their insurance company. They are in fact as badly off as people without a secure residence status from non-EU countries who are cared for on the basis of the AsylbLG. With regard to language courses or access to the labour market, the SOLWODI help centres need to support EU citizen GBV victims to have their school or professional qualifications obtained in the country of origin recognised.

SOLWODI considers that the access to support services for foreign GBV victims is greatly hindered. SOLWODI sees that the non-discriminatory approach of Art. 4 para. 3 is breached with regard to migrant women that are EU and third-country national citizens. SOLWODI calls on the German government to loosen immigration law so that these GBV victims can fully enjoy their rights as laid down in the Istanbul Convention and have equal access to general support services.

Article 22 – Specialist support services

Based on evidence from the CCM-GBV project and our daily work, we know that migrant and asylum-seeking women are more likely to disclose cases of GBV to female NGO counsellors. Our evidence suggests that a multidisciplinary team, including a psychologist, a lawyer/ legal advisor and a social worker, is the most efficient in tackling the challenges victims of gender-based violence face. Teamwork improves the quality of counselling because in a team professionals can exchange opinions and support each other. If working as a team, it is a good practise to assign a case manager to each client. A case manager is a person who is taking care of a case from the beginning till the client does not need assistance anymore. A case manager connects the different professionals together and is often the person of trust for the client. In order to offer specialist support services to female GBV victims, it is preferred to have female counsellors to counsel women (Lilja 2019). How we as NGO supporting migrant and asylum-seeking women offer specialist support services has already been described in the section on Art. 20. As already described in the section on Art. 8, **NGOs - such as ours - need resources for providing specialised services, in order to close gaps in the practical implementation of the provisions of the Istanbul Convention.**

Article 23 – Shelters

With reference to the Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6), the explanatory report to the Istanbul Convention recommends that safe accommodation in specialised women's shelters are available in every region, with one family place per 10,000 head of population, whereby the number of shelter places however should depend on the actual need. The studies by Helfferich et al. (2012) and Schröttle et al. (2016) show that a conventional-conform care is not yet available in Germany: there are gaps in the care of individual groups such as migrant women, shelters in rural areas are lacking and there is a need for further personnel.

In Germany, the problem is that the individual financing of women's shelters is based on so-called *Tagessätze* (daily rates), which are predominant in many federal states. These *Tagessätze* make it considerably more difficult or completely impossible to enable fast and unbureaucratic access to protection and support. Common is that the women affected by violence and their children must be entitled to benefits according to the corresponding Social Security Code so that the responsible authority (job center or social welfare office) pays the daily rates to the women's shelter. For the affected women and their children, the daily rate funding of women's shelters makes it more difficult both for them to access the shelter and to develop an independent perspective. High daily rates in women's shelters force women who have earned their own income to pay SGB II benefits (ZIF 2019). Particularly, undocumented refugee women and their children are excluded or hindered in accessing shelters and specialist support services, the reason being governmental policies denying people without residence permit or not being a resident of a certain province or town access to public funds and services. This makes it especially difficult for GBV victims to flee the violence. Thereby our evidence from the CCM-GBV project shows, that accommodation in a women's shelter specifically for victims of gender-based violence would be the most beneficial option for most victims. Asylum-seeking women were sometimes also refused a place in a shelter due to their residence obligation, due to lack of funding for accommodating refugee women, language issues or because a shelter was not able to accommodate children (Lilja 2019; Lilja et al. 2020).

The COVID-19 pandemic, seems to have fostered the already existing problems. In general, it proved to be difficult to access women shelters and receive a prompt counselling during the height of the COVID-pandemic. Women shelters were forced to stop taking in new women due to increasing numbers of women seeking safety. The COVID-19 pandemic reveals even more how women shelters and counselling centres are lacking personnel staff for the counselling and support of women and their children.

SOLWODI calls on the German federal government to provide for further funding on 1) opening new shelters/renovating old shelters and 2) funding of specialised sheltered women's houses for asylum-seeking and migrant women in distress (for more information see section on Art. 8). For asylum-seeking women, SOLWODI asks for less restrictive immigration policies enabling asylum-seeking or irregular migrants to move into sheltered housings without bureaucratic burdens. SOLWODI would welcome a nationwide establishment of collective accommodation for women and children in accordance with the EU Reception Directive.

Article 27 – Reporting

The dark figures in cases of gender-based violence, particularly among asylum-seeking and migrant women, continues to be high. Asylum-seeking, refugee and migrant women often do not report GBV crimes to the police due to their immigration status, fear of isolation, victim-blaming, little knowledge about support services, lack of host language skills, etc. (Wells et al. 2019). In 2019 alone, SOLWODI supported 2,619 initial first contacts from 112 countries who have - amongst others - experienced the gender-based violence forms mentioned in Arts. 33-40. In 2019, SOLWODI alone had 441 first contacts, in which physical intimate partner violence was one reason why the woman has contacted us (SOLWODI 2019). The BKA statistic on intimate partner violence however shows that the majority of reports to the police are made by female German nationals, EU citizens and women from Turkey, Syria and Serbia; however, not demonstrating how many women are affected from e.g. Latin America or Africa (BKA 2019) (for more information also see section on Art. 11 above).

The empirical data from the CCM-GBV project demonstrates that the connection or lack of connection between the criminal justice system and the asylum system is relevant when discussing low reporting rates by asylum-seeking women. A missing residence status or irregularity can lead to victims not reporting the crime to the police, making their victimhood unnoticed or even leading to criminal investigations against themselves (e.g. because of illegal immigration), meaning that support and protection measures are denied. (Lehmann et al. 2020). It increases the risk of mental illness (e.g. depression) and also suicide (Al-Modallal 2012: 560). It can sometimes occur that victims are rejected, when they want to file a police report (Lehmann et al. 2020). Following the police report, they do not receive any information on their case without personal initiative (Lehmann et al. 2020). **Based on our experience, we recommend that the German government funds dark figure studies** (see section on Art. 8 for more information) **and fosters the role of NGOs in providing reporting numbers** (see section on Art. 9 for more information). **It must be made obligatory that police officers are not allowed to reject victims of GBV when they want to file a police report. If low reporting rates shall be tackled and it shall be ensured that violent crimes against refugee women are not met with impunity, the proposed solutions must also take into consideration the residence status needs of the victims** (see section on Art. 60 for more information). **In addition, the criminal justice system should be as victim-centred and gender-sensitive as possible in order to encourage and support refugee women to report crime.**

Article 30 – Compensation

The latest legal development is the in December 2019 enacted fourteenth social security statute book (*Vierzehnte Sozialgesetzbuch (SGB XIV)*), which inter alia includes the victim compensation law (*Opferentschädigungsgesetz (OEG)*). In line with this law, victims of a violent intentional crime - such as gender-based violence crimes - that have suffered damage to their health, can make a claim for compensation (§ 1 OEG). For the claim of financial compensation on the basis of the OEG further evidence and requirements also need to be fulfilled. Here there is in many cases the risk of *re-traumatisation*. In addition to the court procedure, the crime event and its consequences as well as damages need to be described in detail. Occasionally, medical reports are requested. Despite the efforts, it is possible that payments are refused (Lehmann et al.

2020). There are some points here that do not fully meet the requirements of the Convention: 1) At present, people affected by psychological violence, such as stalking or cyber-violence, are not entitled to victim compensation within the meaning of Article 30(2). 2) Women without a residence permit are excluded until they receive a *Duldung*. 3) In addition, the procedures sometimes take several years and thus cause considerable further burdens (Rabe & Leisering 2018). **In order to ensure a non-discriminatory implementation of the Convention within the meaning of Art. 4 para. 3, GBV victims from third countries should be treated in the same way as other beneficiaries.**

Article 49 – General obligations

SOLWODI continues experiencing that criminal proceedings in gender-based violence matters are too lengthy. Investigations and proceedings which take years hinder a GBV victim from processing the trauma of violence and moving forward with her life. From the victim's perspective a very important improvement would be a swifter and more speedy criminal justice process in order to prevent *secondary victimisation* (Lilja et al. 2020; Lehmann et al. 2020). Tackling this would require **more resources, prioritisation of certain cases as well as smoother co-operation between the criminal justice actors which SOLWODI calls on the German federal government.**

Article 52 – Emergency barring orders

In Germany, emergency barring orders (EBO) are carried out by the police. In the case of EBOs that need to be implemented in refugee shelters, the case example of Germany shows that the police can seldom separate the abuser from the victim due to residence obligations (Wells et al. 2019). Therefore, it is questionable in how far EBOs can be used in cases of refugee women experiencing GBV in refugee accommodations. **SOLWODI therefore recommends that EBOs are fully implemented in refugee accommodations, thereby taking into considerations our recommendations mentioned in the section on Art. 60.**

Article 53 – Restraining or protection orders

In general, asylum-seeking women seldom have protected and retreat areas in refugee accommodations. The families often experience intense situations due to the living experiences and experiences made during their flight. Refugee women therefore are at a higher risk of becoming or continue being a victim of GBV in refugee accommodations by family members, other refugee inhabitants, security staff, etc. Further, the residence permit often causes problems in protecting asylum-seeking women from GBV crimes in refugee shelters due to residence obligations (especially when asylum-seeking women live in a reception centre). Restraining orders against asylum-seeking perpetrators impose problems, as a ban to return to a shared refugee accommodation could lead to the perpetrators breaching their residence obligation (*Residenzpflicht*¹), if he/she is forced to live outside the accommodation (Wessel & Frings 2017). As this is hardly done, asylum-seeking women are at risk of facing further gender-based violence.

¹ As soon as asylum seekers have submitted an asylum application, they are subject to a residence obligation (§56, §59a AsylG).

Although the residence obligation and residence requirement (*Wohnsitzauflage*²) does not represent an obstacle to expulsion, the additional requirements appear problematic: on the one hand, the early involvement of the given immigration authority and, on the other, the high requirements of proportionality (Rabe 2018). Moreover, refugee women cannot apply for a name change if their asylum procedure is being processed. Due to residence obligations (especially when refugee women live in a reception center), GBV victims must obtain a relocation permit³. To this end, the immigration and/or social security authorities must agree to a change in the residence requirement or the allocation of new accommodation for the perpetrators, which in practice often proves to be too lengthy (Rabe 2015). The consent to transfer to a women's shelter is often linked to a report, which does not apply to German women (Hauser 2019). The lack of places in women's shelters and the question of responsibility for bearing the costs on the basis of the residence requirement mean that asylum-seeking women are redistributed to another mixed-gender refugee accommodation, where they are again exposed to the risk of gender-based violence. **SOLWODI therefore recommends that the German federal government ensures that restraining protection orders are fully implemented in refugee accommodations, thereby taking into considerations our recommendations mentioned in the sections on Art. 60. The accommodation of refugee women in sheltered housings must be possible without filing a police report in line with the principle of non-discrimination (see section on Art.4 para.3 for more information).**

Article 56 - Measures of protection

With the third victim reform law (*Drittes Opferschutzreformgesetz*), the victim's interests were increasingly focused on and further steps were taken to increase the standard of protection for victims. The reform's greatest achievement is the introduction of the psycho-social process support (*psychosoziale Prozessbegleitung*). Since the January 01, 2017, particularly vulnerable injured parties have the right to professional guidance and care during the criminal proceeding (§ 406 g StPO). The legal implementation of this legal claim was substantiated with the law on psycho-social support in criminal proceedings (*Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren* (PsychPbG)) from December 21, 2015. In particular entitled are children and minors, but also adult victims that are victims of violent or sexual offences. According to § 2 PsychBG, psycho-social process support is a particular form of judicial guidance during the criminal proceeding for particularly vulnerable injured parties, during and after the main hearing. Hereby victims have the possibility to receive intensive, professional, non-judicial support throughout the whole criminal proceeding. Aim of the psycho-social process support is to reduce the risk of individual burdens for the injured party and to prevent *secondary victimisation* during the criminal proceeding. In cases, in which the victims are minors or particularly vulnerable adults and have been victims of severe crimes, the possibility exists that courts can order psycho-social process support. Psycho-social process support is offered by (judicial) state institutions such as victim support services, victim protection organisations as well as NGOs. In some federal states, the possibility exists that victim witnesses are also accompanied by a *Prozessbegleiter*in* during the criminal proceeding in court (Lehmann et al. 2020). **SOLWODI**

² After submitting an asylum application, asylum seekers are obliged to live at a certain place (obligation to take up residence) (§47, §53 (1) sentence 1 AsylG).

³ In Germany it is by filling out a request form at the Federal Office or Foreigners Office.

welcomes this development, as it is a decisive step in supporting GBV victims in criminal proceedings.

Article 59 – Residence status

As SOLWODI feared, the increase in the duration of marriage to three years has further intensified the massive problems for migrant women affected by violence (§31 AufenthG [Residence Act]). As soon as a woman flees to a women's shelter, the marriage ends. According to § 31 para. 2 AufenthG, a woman can obtain an independent right of residence, irrespective of the marriage term, which has now been increased to three years, if this is necessary to avoid particular hardship. However, in order to apply for hardship cases, evidence must be provided of the acts of violence experienced. It is difficult to prove this, because GBV crimes - such as e.g. domestic violence - usually take place without witnesses and thus the violence experienced is usually questioned by the immigration offices. If the woman is not believed - and this is often the case when there is no objective evidence - she must return to her husband or leave the country. Moreover, the examination of hardship applications usually takes a very long time. As a result, women have to remain in the women's shelter for many months until the case is decided, as they cannot rent their own apartment if their residence status is unclear.

The reservation to Art. 59 para. 3 circumvents the obligation under the Convention, for persons who are obliged to leave the country. A GBV victim's residence permit can be renewed on the basis of her personal situation or her required participation in investigation or criminal proceedings the perpetrator(s). Instead of the residence permit, only a *Duldung* (subsidiary protection) for a maximum of six months is granted. This timely-restricted residence permit does not represent legal residence permit; it means the temporary suspension of deportation with the known consequences, such as the limited access to the labour market, the residence requirement and accommodation in collective accommodation. The reservation to para. 3 is astonishing, since the German law allows victims of human trafficking that act as victim witnesses to stay for the duration of the criminal proceeding according to §25 para. 4a and 4b AufenthG. Against this background it remains unclear why the same right is not granted to victims of gender-based violence (Rabe & Leisering 2018). **SOLWODI calls on the German government to withdraw its reservation regarding Art. 59 para. 2 and 3 and to implement the provisions contained therein as soon as possible, the latest by mid of 2023.**

Article 60 – Gender-based asylum claims

The burden of proof for asylum lies with the asylum applicant. If asylum is not granted, the GBV victim has to leave the country (i.e. §§ 34, 34a 35 AsylG). This is in particular the case for GBV victims from *safe third countries*, such as Albania. If asylum is granted, GBV victims most likely also receive a deportation ban/*Duldung* according to §§60 V or VII. AufenthG provided that they can prove that they will be subjected to torture or inhuman or degrading treatment upon return. In distinct cases, GBV victims might also receive a refugee protection (Art. 16a GG or §3 I, IV AsylG, §60 I AufenthG). It is also possible for asylum seekers to receive a residence permit on the basis of another humanitarian ground as listed in §25 V AufenthG. In Germany, gender-based persecution can be a basis for asylum claims (§3 I AsylG).

In 2019, 2,391 persons made an asylum claim on the basis of gender. Since the implementation of the Istanbul Convention, the numbers of asylum-seeking women receiving asylum on the basis of gender-persecution went down (BT-Drucksache 19/10341: 15-16)⁴. The recent statistical information provided by the Federal Office for Migration and Refugees (BAMF) does not indicate how many of these asylum seekers were women (BAMF 2020: 44). In cases of violence, the BAMF provides for interviews by trained special representatives for gender-specific persecution - *Sonderbeauftragte für geschlechtsspezifische Verfolgung* - that are trained on the basis of a curriculum designed according to modules of the European Asylum Support Office (EASO). Based on EASO's guidelines, a woman should be interviewed by the person affected and a language mediator should be provided. Further service instructions contain guidelines for action in the case of certain acts of violence such as female genital mutilation. Beyond this legal and statutory situation, there are indications from practice that there is a lack of awareness in some cases. Further, the SOLWODI counsellors note that these special interviewers are not always available. In the eyes of SOLWODI, the BAMF is lacking human resources for special interviewers.

SOLWODI is concerned about the fact that if asylum seeking women are granted a refugee status, it is not on the basis of having experienced a form of gender-based violence (e.g. forced marriage), but another ground of persecution. Rather it is common practice that gender-based violence victims receive subsidiary protection, provided that the refugee woman can prove that she is a victim of such a crime, which in most cases is not possible as discovered during the CCM-GBV project (Wells et al. 2019; Lilja 2019).

In refugee accommodations, refugee women seldom have protected and retreat areas. Female GBV victims therefore are at a higher risk of becoming a victim of another form of GBV (e.g. rape, domestic violence) or continue to be a victim of GBV (e.g. domestic violence) in refugee accommodations by family members, other refugee inhabitants, security staff, etc. In the case example of Germany, this situation led to federal violence protection concepts - *Gewalt-schutzkonzepte* - to emerge in line with the Istanbul Convention. Federal states initiated measures regarding the sanitation areas, room lightening, staff training on GBV, etc. (BMFSFJ 2017: 3-46). Until recently, these concepts however have been non-binding. SOLWODI welcomes that the German federal government has made violence protection concepts binding by law since August 2019 through the *Zweite Gesetz zur besseren Durchsetzung der Ausreisepflicht* (Second law for better enforcement of the obligation to leave the country) (§44 Abs. 2a AsylG [Asylum Act]). However, it still needs to be assessed whether this legal norm will actually be put into practice. The lockdown during the COVID-19 pandemic in March and April 2020 showed that in practice violence protection in refugee shelters is still not guaranteed. For some migrant women "home" means living in refugee shelters together with their husband/partner, where they are obliged to live according to the *Wohnsitzauflage* and *Residenzpflicht* and cannot escape GBV. While refugee shelter staff have the problem that asylum-seeking women especially in reception centres only stay for a short period and building-up trust is difficult, counsellors from specialised

⁴ Of course it must be stressed that the asylum numbers have went down after the so-called refugee crisis; but the numbers are still not reflecting the realities of many asylum seeking women.

counselling centres face the problem that it is often difficult to stay in contact with GBV victims once transferred to shared refugee accommodations, as they are often difficult to reach.

The asylum system is the first concern for the women, and only after having gone through it, they can consider turning to the criminal justice system. Once they have received a positive asylum decision, the knowledge about these rights and services may help women gain courage and confidence to file a police report (Lilja et al. 2020). **SOLWODI urges the German federal government to fully implement Art. 60 para. 1-3 of the Istanbul Convention.**

Article 61 – Non-refoulement

The category of safe-third country must be reconsidered. Countries might be "safe" for men, but not necessarily for women. Gender-specific forms of persecution are still too often overlooked by German authorities (see also section on Art. 60). Highly problematic is the trend to push for more internal flight alternatives/*innerstaatliche Fluchtalternativen*, whereby the geographical extent of gender-based persecution is not taken into account. As already described by us on Art. 60, the *Sonderbeauftragte für geschlechtsspezifische Verfolgung* are sometimes not available to conduct the interviews and there is often a lack of sensitivity by these interviewers. **SOLWODI urges the German federal government to change its list of safe third countries from a gender-sensitive perspective and provide for more specialised and more trauma- and gender-sensitive asylum interviewers at the BAMF.**

Recommendations

In order for NGOs such as SOLWODI to provide for support to migrant, refugee and asylum-seeking women in distress, Germany needs an improved financing of the regulatory system, whereby e.g. more women shelters are established and more personnel costs with permanent (!) contracts are financed (see sections on Arts.8, 22 and 23 for more information). SOLWODI recommends

- the full implementation of the anti-discrimination principle (Art. 4 para 3).
- the full access to general support services for target groups that have not yet been sufficiently reached (i.e. migrant and asylum-seeking women that are victims of GBV)
- improved financing of regular offers from women shelters and specialised help centres
- financing of supervision costs for counsellors supporting GBV victims
- improved gender-specific data collection and monitoring
- financing of awareness-raising campaigns, also taking into account that there are illiterate target groups and women that lack German language skills
- improved financing and expansion of the target groups of perpetrator programmes
- equal access to compensation
- improvements in the criminal justice system and police with regard to trauma- and gender-sensitivity in order to increase GBV reporting through compulsory training for police officers and judicial staff
- full implementation of EBOs and restraining orders in refugee accommodations
- the withdrawal of the reservations regarding Art. 59 para. 2 and 3
- improved recognition of gender-based persecution in line with Art. 60
- more personell resources and trauma- and gender-sensitive training for *Sonderbeauftragte für geschlechtsspezifische Verfolgung*

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