Title: Human rights violations, detention conditions and the invisible nature of women in European immigration detention: A legal realist account.

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Abstract

Approach: Despite United Nations human rights frameworks and European Union standards; conditions in European immigration detention settings continue to pose a health risk to those detained. Migrant health rights when detained are intertwined with the right not to be subjected to arbitrary detention, detention in conditions compatible for respect for human dignity and right to medical assistance. Migrant women are particularly vulnerable requiring special consideration (pregnant and lactating women; single women travelling alone or with children; adolescent girls, early-married children, including with new born infants) in immigration detention settings.

Purpose: A legal realist assessment of women's situation in European immigration detention focuses on relevant international and European human rights instruments applicable to conditions and health rights in detention settings, academic literature and relevant European Court of Human Rights (ECtHR) jurisprudence since 2010.

Findings: The situation of women in immigration detention is patchy in EU policy, academic literature and ECtHR jurisprudence. Where referred to, they are at best confined to their positionality as pregnant women or as mothers, with their unique gendered health needs ill-resourced. ECtHR jurisprudence is largely from male applicants. Where women are applicants, cases centre on dire conditions of detention, extreme vulnerability of children accompanying their mother, and arbitrary or unlawful detention of these women (with child).

Originality: Concerns have been raised by the European Parliament around immigration detention of women including those travelling with their children. There is a continued failure to maintain minimum and equivalent standards of care for women in European immigration detention settings.

Key Words

Immigration detention; women; human rights, Bangkok Rules

Introduction

The flow of migrants into Europe continues, impacting severely on service capacities and standards of care in immigration detention settings. Many are detained because of lack of certainty regarding immigration status. Despite the European Union (EU) *'Return Directive'*, (The European Parliament and the Council of the European Union, 2008), the Global Compact on Refugees (GCR) (UNHCR, 2018), the Global Compact for Safe, Orderly and Regular Migration (GCM) (UN General Assembly, 2018) and international guidelines mandating that detention should be the exception and not the norm (UNHCR, 2012), immigration detention is mostly used to facilitate deportation (European Migration Network, 2014; APT/UNHCR/IDC 2014; Apap, 2016). Immigration detention is no longer an exceptional response to irregular entry or stay, has become routine, and is increasingly *"an established policy apparatus based on dedicated facilities and burgeoning institutional bureaucracies"* (Apap, 2016; WGAD 2018; Majcher, 2019). As the European Court of Human Rights (ECtHR) consistently refuses to apply the principle of necessity and proportionality requirements under *Article 5*(1f); *"the right to liberty and security of person"* (see *Chahal v the United Kingdom* ECtHR, 1966), thousands endure arbitrary detention each year (Apap, 2016). It remains impossible to obtain a true picture of immigration related detention with regard to the locations of detention settings(which include specialised facilities, airport transit zones, police stations, disused factories etc), statistics on numbers detained, and any breakdowns of accompanied and unaccompanied minors (Global Detention Project, 2015).

The EU Fundamental Rights Agency (FRA) reports on the purposes and conditions of immigration detention with respect to public order, public health and national security (EUFRA, 2010). The United Nations High Commissioner for Refugees (UNHCR) has published a range of immigration detention standards prohibiting arbitrary detention and regarding adequate conditions of detention which uphold the rights and dignity of migrants (UNHCR, 2012). Safeguards against arbitrary detention apply to those identified as having vulnerabilities (elderly, disabled, women and unaccompanied children), and who should be assessed for specific vulnerabilities and informed around due process (Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017, ECtHR, 2020). Children should be detained only exceptionally, as a last resort and States must first and foremost strive to place them in community alternatives to detention (Convention on the Rights of the Child (CRC, *Articles* 30, 37b) (UN General Assembly, 1989; UNHCR, 2014a; UNHCR, 2014b; Committee on the Protection of the Rights of All Migrant Workers and Committee on the Rights of the Child, 2017). The GCM is silent

on the special conditions of detention and care afforded to other vulnerable migrants (SRHRM, 2002; SRHRM, 2012).

This *Viewpoint* firstly provides contextual detail on the complexities of migrant health, health inequalities and health risks encountered in European immigration detention. In 2017, women comprised over half of all migrants and refugees in Europe (UN, 2017), and concerns are raised by the European Parliament around immigration detention of women including those travelling with their children (Apap, 2016). Using a legal realist approach (Leiter, 2015) the subsequent focus is on assessing the situation of women in European immigration detention since 2010. In 2010, the UN '*Bangkok Rules'* (UN General Assembly, 2010) were created as soft-law principles laying the foundation for intensified efforts to support the rights of women in detention (Huber, 2016; Barbaret and Jackson, 2017; PRI, 2020). A realist account is subsequently developed through focused analysis of international and European human rights treaties, non-binding human rights instruments, European Court of Human Rights (ECtHR) jurisprudence, academic and policy based literature, cognizant of the indeterminate nature of application of human rights norms and standards to European immigration detention conditions and the health rights of women. Please note: it was beyond the scope of this *Viewpoint* to also include European Court of Justice (ECJ) jurisprudence, as the ECJ must offer at least the same level of protection as the jurisprudence of the ECtHR, and ECtHR cases regarding rights breaches of standards of medical care when repatriated to countries of origin were excluded.

General and gendered health risks in immigration detention

The Strategy and Action Plan for Refugee and Migrant Health in the World Health Organization European Region was adopted in 2016 to assist in guiding progress on the health aspects of migrancy (WHO, 2018). There is a growing European evidence base on the health of migrants, the health inequities and healthcare barriers they face in the community (Lebano *et al*., 2020) and in immigration detention (Lungu-Byrne *et al.*, 2020; Van Hout *et al.*, 2020). Migrant health is highly complex being underpinned by the impact of the migratory process itself and social determinants of health, resulting in a range of health morbidities (Rechel *et al*., 2013; Pavli and Maltezou, 2017; WHO, 2018). The health inequities of migrant women are well evidenced (IOM, 2010; Keygnaert *et al*., 2014; Fair *et al*., 2020). Many may be accompanied by their children or give birth in immigration detention, some may be under-age brides and considered minors, others are trafficked (Apap, 2016). They are particularly affected by the physical and psychological impact of their journey to Europe (exposure to sexual and gender-based violence or SGBV, female genital mutilation, psychological manipulation,

human trafficking), and the subsequent pathogenic consequences of immigration detention (European Parliament, 2007; Apap, 2016). They have marked adverse pregnancy related indicators, and are vulnerable to mental health disorder and sexually transmitted infections (Skøtt Pedersen *et al*., 2013; Apap, 2016; Keygnaert *et al*., 2015; Keygnaert *et al*., 2016; Villalonga-Olives *et al*., 2017). Their children are disproportionately affected by trauma-related psychological disorders (Belhadj Kouider *et al*., 2014; Curtis, 2018; Mares, 2020).

Despite relevant non-binding resolutions of the Council of Europe and standards in the EU Reception Condition and Return Directives (The European Parliament and the Council of the European Union, 2008; EU: Council of European Union, 2013), immigration detention settings in Europe pose a health risk to those detained there (Rijks *et al.*, 2017). Migrant health rights are intertwined with "*the right not to be subjected to arbitrary deprivation of liberty*", right to detention *"in conditions compatible with respect for human dignity, with execution of the measure not exceeding unavoidable levels of suffering inherent in detention"*, and right to access to medical assistance (Council of Europe and European Court of Human Rights, 2015; Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017). Inhumane immigration detention exacerbates general good health on intake, with those detained significantly vulnerable to environmental and communication stressors, and consequent mental health conditions (Lungu-Byrne *et al.*, 2020; Van Hout *et al.*, 2020). Gender discrimination experienced by women in immigration detention encompasses neglect and ill-treatment and includes various forms of custodial violence (SGBV, inappropriate surveillance by male staff, lack of privacy and denial of appropriate medical care) (PRI, 2020; UNODC, 2018; OHCHR, 2008; UN CAT, 2015).

Right to health and international human rights frameworks applicable to immigration detention

The universal, non-discriminatory right to the highest attainable standard of health falls within the Universal Declaration of Human Rights (UDHR) (*Article* 25) (UN General Assembly, 1948); and international human rights treaties which include the International Covenant on Civil and Political Rights (ICCPR)(*Article* 6) (UN General Assembly, 1996), International Covenant on Economic, Social and Cultural Rights (ICESRC)(*Article* 12) (UN General Assembly, 1966), the Committee on Economic, Social and Cultural Rights (CESC) (*Article* 10), the *European Social Charter* (*Article* 10) (Council of Europe, 1996), and the Charter of Fundamental Rights of the EU (*Article* 11) (European Union, 2012). *General Comment 14* of the Committee on Economic, Social and Cultural Rights notes that "*States are under an*

obligation to respect the right to healthcare by refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and irregular migrants"(Committee on Economic, Social and Cultural Rights, 2000). Access to equitable health prevention and care for migrants is further explicit in the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (*Articles* 28,43,45) (UN General Assembly, 1990), Elimination of All Forms of Racial Discrimination (CERD)(*Article* 5. e, iv) (UN General Assembly, 1965), Protocols against the Smuggling of Migrants by Land, Sea and Air (UN General Assembly, 2000b); Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN General Assembly, 2000a); and the UN High-level Dialogues on Migration and Development (UNHCR, 2006) (2006, 2013), UN Convention Related to the Status of Refugees (UN General Assembly, 1967) and the New York Declaration for Refugees and Migrants (UN General Assembly, 2016a).

This year marks the 10 year anniversary of the *'Bangkok Rules'*(UN General Assembly, 2010) intended to support and complement, where appropriate, the UN Standard Minimum Rules for the Treatment of Prisoners (United Nations, 1955), Basic Principles for the Treatment of Prisoners (UN General Assembly, 1991), Minimum Rules for the Treatment of Prisoners ('*Nelson Mandela Rules'*) (UN General Assembly, 2016b) and Standard Minimum Rules for Non-custodial Measures ('*Tokyo Rules'*) (UN General Assembly, 1991a). As immigration detention settings are somewhat unique, the UNHCR (2012) detention guidelines and standards in detention settings and alternatives to detention reflect the spirit of the '*Bangkok Rules'* relating to detention conditions, and the unique health rights and right to health care of women. *Rule 9.3* centres on the general rule that pregnant and nursing mothers have special needs and should not be detained, men and women are to be segregated, safeguards should be in place to prevent SGBV, women's specific hygiene needs are to be met, gender sensitive and trained female staff are to be preferred, victims of SGBV should be provided with immediate supports taking into account the risks of retaliation, and women's rights to requisite medical care whilst deprived of their liberty in immigration detention. These are further supported by immigration detention guidelines set by the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2017).

Extant evidence on women's situation in European immigration detention

The UNHCR has observed poor standards in Greece, Italy, Bulgaria, France and the former Yugoslav Republic of Macedonia, with specific concerns raised around punitive and sub-standard conditions, potentially tantamount to inhuman and degrading treatment, and

especially detrimental to women and their children (OHCHR, 2017). Differences also exist across EU Member States in providing health services and support responses to those detained (Human Rights Council, 2010; Lungu-Byrne *et al.*, 2020). Despite the influx of mass population movement into Europe since 2015, there is very little empirical research specific to women in immigration detention since adoption of the '*Bangkok Rules'*. This is perhaps reflective of the difficulties in gaining researcher access, and the male dominated presence in immigration detention itself. The bulk of European academic literature in the past decade originates from the United Kingdom (UK). Of note is that the UK opted out of the 28 day limit on detention, meaning that individuals are held indefinitely (Dexter and Katona, 2018). Notwithstanding the UK's recent withdrawal from Europe, the literature is concerning being indicative of serious failures to meet the complex needs of women, with denial of medical care and the suppression of human (and health) rights, social justice and health protection observed. Rights are breached based on inhumane living conditions and challenges in accessing maternity care, lack of staff cognisance of prior histories of SGBV/trafficking, lack of privacy when receiving medical care, disrupted supply of medicines and inadequate provision of food, with migrant women reporting deteriorating mental health conditions (including self-harm), feelings of isolation and powerlessness over their health (Medical Justice, 2013; Palloti and Forbes, 2016; Smith, 2017; Arshad *et al.*, 2018; Dexter and Katona, 2018; Hollis, 2019).

Elsewhere in Europe, and according to the European Race Audit, tragedies are many, including the deaths of pregnant women whilst in immigration detention due to medical neglect (European Race Audit, 2010). Extant literature is male dominated, with very few studies presenting the unique gendered perspectives and experiences of detained migrant women. One qualitative study in Sweden has three female participants, with migrant women likening immigration detention to imprisonment (Puthoopparambil *et al.*, 2015). Studies in Greece, Malta, Italy and Belgium include women reporting on sub-standard detention standards, failures to segregate men and women, inadequate medical care and disease control measures. (Kotsioni, 2013; Taylor-East *et al.*, 2014; Padovese *et al.*, 2014). Of interest is the emergence of feminist and theoretical literature published on the gendered complexities of the European detention sphere, security and the upholding of rights and positionality of migrant women when detained (Bosworth, 2014). Migrant women's experiences (Italy) are increasingly viewed through a feminist lens, where *"unequal relations and gendered domination"* continue, where they are positioned as *"excludable and deportable subjects"* and which illustrate how the immigration control system underpins the *"(re) production of a dominant normative order"* (Esposito *et al.*,2019). Theoretical works refer to the positionality of migrant women,

underpinned by the existence of gendered modalities of migrant governance that operate within broader migration controls, where gendered constraints of medical humanitarianism in detention settings; *"from practices of immobilisation to imposed practices of mothering"* are grounded in racialised and gendered processes of "*othering"* and *"deservingness"* (Spain) (Sahraoui, 2020a; Sahraoui, 2020b). In Greece, a study illustrated how *"particular gender techniques"* differentiate those women deserving of special treatment (i.e. mothers, victims of trafficking) whilst detained, from those less deserving (i.e. illegal migrants, former prisoners) (Alberti, 2010).

Assessment of extant ECtHR Jurisprudence

ECtHR jurisprudence since 2010 was scrutinised for cases where women in immigration detention were included as applicants. The bulk of cases are brought to the Court by male applicants (ECtHR, 2021a; EctHR, 2021b) with claims generally centring on lawfulness of detention, expulsion orders and detention conditions (see *Georgia v. Russia*, EctHR, 2014a; *Khlaifia and Others v. Italy*, ECtHR, 2016a; *Sakir v. Greece*, ECtHR, 2016b; *C.D. and Others v. Greece*, ECtHR, 2014b). Several cases do refer to women, either in families, or as single women travelling with children. These claims (at times multiple) centre on *Articles 3* (prohibition of inhuman or degrading treatment), *5* (right to liberty and security of person) and *13* (right to an effective remedy) of the European Convention on Human Rights(ECHR) (Council of Europe, 1950). The rights of female immigration detainees (and their children) underpinned by their histories of rape and forced marriage and their entitlement to minimum standards of care are outlined in several cases -see *Belgium-Brussels Labour Tribunal case* (ECtHR, 2017a). *Denmark - The Refugee Appeals Board* (ECtHR, 2017b); *Switzerland - A., B., C. (Nigeria) v State Secretariat for Migration* (ECtHR, 2019a); *Denmark - Refugee Appeals Board's decision of 17 April 2018* (ECtHR, 2018a) and *Poland - Polish Council for Refugees* (ECtHR, 2012a). The Court decisions mostly appear to hinge on establishing a threshold for inhuman or degrading treatment whilst in detention; and establishing if arbitrary or unlawful immigration detention has taken place. Where families that include an adult woman are applicants, the ECtHR *"consistently finds that child immigration detention amounts to torture and degrading treatment"* and that the principle of "*best interests of the child"* must prevail (PICUM, 2019). Whilst many identified cases involve multiple claims regarding breaches of the European Convention on Human Rights (ECHR) (Council of Europe, 1950), the jurisprudence that follows is presented in three themes; *the threshold of severity of conditions*

of detention, extreme vulnerability of children accompanying their mother, and *arbitrary or unlawful detention of the female applicant (with child).*

There are observed complexities involved in establishing a threshold of severity of detention conditions as per *Article 3*. Whilst some cases fail in proving violation of *Article 3*, they succeed regarding *Article 5*. The case of *J.R and others v Greece* (ECtHR, 2018b) was the first judgement dealing with the implementation of the EU-Turkey Statement (European Council-Council of the European Union, 2016), and the rise in legitimacy of poor conditions in detention settings (lack of sanitation and hygiene, poor access to medical care and legal assistance, insufficient food and water) under the agreement. One of the claimants was a woman travelling with her two children. The ECtHR ruled no violation of *Article 5(1)* had occurred, and *"that the threshold of severity regarding detention conditions to be considered inhuman or degrading (Article 3) had not been reached"*. Greece had however violated *Article 5(2)* with regard to provision of information regarding reason for detention. The case of *Kaak and Others v. Greece* (ECtHR, 2019b) observed a complaint around conditions of detention including the reference that conditions could not ensure the safety of women and children, despite the ECtHR ruling no violation of *Articles 3* or *5* had occurred.

In the case of *Abdi Mahamud v. Malta* (ECtHR, 2016c), the ECtHR ruled Malta had violated *Article 3* and *5*. The applicant, a Somali woman was held in prolonged detention in adverse conditions (overcrowding, limited access to open air, lack of privacy, and lack of female staff) and requested release due to her ill health and status as a vulnerable individual. The judge then partially dissented, finding insufficient evidence of violation of *Article 3*. He further stated that her claim for health vulnerability was not exacerbated by the severity of detention conditions and that she did not qualify for the categories of vulnerability requiring closer scrutiny (i.e. pregnant or breastfeeding). In *Mahamed Jama v. Malta* (ECtHR, 2015a), the applicant reported inadequate conditions of detention; and that her detention of eight months was arbitrary and unlawful. The ECtHR ruled no violation of *Article 3* or *5 (1)* regarding detention pending her asylum claim had taken place. It did however rule that violation of *Article 5(1)* had occurred regarding her detention ***following*** the decision on her asylum claim and violation of *Article 5 (4)* had occurred, regarding *"an adequate remedy to challenge the lawfulness of her detention"*.

There are several cases where the ECtHR established conditions of immigration detention concurred with inhuman and degrading treatment in breach of *Article 3*. In *Aden Ahmed v. Malta* (ECtHR, 2013), a Somali woman alleged that her detention was in breach of *Article 5 (1, 2, 4)* and complained that detention conditions represented inhuman treatment

(*Article 3*). The lack of female staff, access to fresh air, exposure to the cold and the inadequate diet exacerbated her mental health due to her particular vulnerability (emotional circumstances due to miscarriage whilst in detention, and separation from her young child). The ECtHR held a violation of *Article 3*. In contrast, in *Moxamed Ismaaciil and Abdirahman Warsame v. Malta,* (ECtHR, 2016d), two women who were detained in the same centre as in *Aden Ahmed v. Malta* (ECtHR, 2013), claimed arbitrary and unlawful detention and submitted that they had not been kept in conditions which were appropriate for young single women. The ECtHR held no violation of *Articles 3* and *5(1),* but ruled that there had been a violation of *Article 5(4).*

There are further mitigating factors regarding breaches of *Article 3* where children are present. In the famous case of *Popov v France* (ECtHR, 2012b), the ECtHR ruled that a married couple with two children had incurred a violation of *Article 3* with respect to the detention conditions of the children (unsafe furniture and automatic doors) and child protection principles (insecurity and hostile atmosphere), despite being detained in pre removal in Rouen-Oissel administrative detention centre, authorised to accommodate families. No violation of *Article 3* was held regarding the conditions of detention of the parents. Circumstances were similar in *Muskhadzhiyeva and Others v. Belgium* (ECtHR, 2010), underpinned by the impact of process and exposure to stress on the vulnerability of the child, and which had amounted to inhuman and degrading treatment. In this case, the applicants, a mother and her four children were placed in pre removal detention near Brussels airport. The ECtHR ruled that a violation of *Article 3* had occurred with respect of the detention of the four children, even though they had not been separated from their mother. This was based on the decision of the extreme vulnerability of the children taking precedence (and official obligation to protect them) over their status as illegal aliens. No violation of *Article 3* was observed with regard to the children's mother.

In *G.B. and Others v. Turkey* (ECtHR, 2019c), a mother with three young children in detention pending deportation claimed unlawful detention and that conditions in Kumkapi and Gaziantep centres (overcrowding, lack of hygiene, lack of open air, lack of suitable food) were in breach of *Article 3*. The ECtHR held that violations of *Article 3* in both centres concerning conditions of detention had occurred; including a violation of *Article 13* in conjunction with *Article 3*; and quoted; "*that detention of young children in unsuitable conditions may on its own lead to a finding of a violation of Article 5 (1), regardless of whether the children were accompanied by an adult or not".* In *Mahmundi and Others v. Greece* (ECtHR, 2012c), an Afghan family, including a pregnant woman with four minors were detained in Lesbos. The ECtHR ruled that *"the deplorable conditions of detention were in breach of Article 3 and observed the lack of specific supervision of the applicants as minors",* and support of woman

who subsequently gave birth in detention. It also ruled a violation of *Article 13* had occurred due to the impossibility for applicants to lodge a complaint regarding detention conditions, and a violation of *Article 5(4).*

In another example, in *Kanagaratnam and Others v. Belgium* (ECtHR, 2011a), a mother with three children were detained in immigration detention, with the ECtHR ruling that there had been a violation of *Article 5 (1)* regarding unlawful detention. Further the ECtHR considered that conditions were not suitable for children, with the Belgian authorities in breach of the children's right to liberty (despite being held with their mother). In *S.F. and Others v. Bulgaria* (ECtHR, 2017c) the applicants, an Iraqi couple and their three children were detained at the border police's detention facility in Vidin, Bulgaria. Whilst their detention period was considerably shorter than in *Popov v France* (ECtHR, 2012b), the ECtHR observed a violation of *Article 3* due to the conditions experienced by the children (run down cell, dirty floor, no access to toilets forcing them to urinate on the floor, no food for 24 hours). In *Bistieva and Others v. Poland* (ECtHR, 2018c) the ECtHR found that the Polish authorities had failed to assess the impact of detention on the family and the children in particular. Notice was also given by the ECtHR to the Polish government regarding the detention of a woman with five children under *Articles 3, 5* and *8* (see *Bilalova v. Poland*) (ECtHR, 2014c).

In *V.M. v. Belgium* (ECtHR, 2015b), the ECtHR found a violation of *Article 3* regarding the grave conditions where a Roma family with five children were forced to live between their removal to detention and expulsion to Serbia (three weeks in Brussels North Railway Station). They took into account the possibility of harm due to the vulnerability of the applicants. There is a communicated case to the ECtHR regarding *A.S. and others v. Hungary* (ECtHR, 2017d) where an Afghan family including the mother (eight months pregnant) as applicant, her husband and two children were detained at the border of Serbia and Hungary. The ECtHR gave notice to the Hungarian Government regarding breaches of *Articles 3, 5 (1)* and *5 (4)* and *13.*

Lastly, only one case directly referred to access to medical care, in the case of a HIV positive woman in *YohEkale Mwanje v. Belgium* (ECtHR, 2011b) which established that deportation at advanced stage of HIV to a country of origin without certainty of appropriate medical treatment did not constitute a violation of *Article 3*, however delay in determining appropriate medical treatment for the detainee ***whilst in*** immigration detention was a violation of *Article 3*, with the ECtHR also ruling a violation of *Articles 5(1)* and *13.*

Conclusion

It is beyond doubt that migrant women in immigration detention are uniquely vulnerable and face heightened risks and harms to health and life (PRI and APT, 2013). Migrant women are less visible in ECtHR jurisprudence, EU policy and academic literature on immigration detention, at best confined to their positionality as mothers and receiving *de facto* protection by virtue of the rights of their child(ren). This is reflective of them as *"Other"* and the inherent gendered tensions in human rights for women deprived of their liberty pertaining to "*protection versus protectionism"*(Berzano, No Date).

Despite the UNHCR Guidelines on Detention (UNHCR, 2012) and in the broader sense the *European Prison Rules* (Council of Europe, 2006), the 2017 Council of Europe guidelines on immigration detention (Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017), and the *Bangkok Rules* (UN General Assembly, 2010), oversight mechanisms clearly vary across Europe (Bhui, 2016; Nethery and Silverman, 2015). This realist account reveals the continued failure to maintain minimum, equivalent and gender sensitive standards of care, with breaches in the human and unique health rights of women detained in European immigration detention settings. Deficits include the lack of application of special vulnerability assessments, access to gender sensitive medical care, poor detention conditions and rights to being informed regarding due process. Given their unique gendered vulnerabilities, assurances of the concept of equivalence of care for migrant women in immigration detention is lamentable. Many are especially vulnerable (for example trafficking victims, pregnant women).

Achieving substantive equality is entrenched in the sustainable development agenda and global efforts to ensure that these women are '*not being left behind'*. Protection of ***all*** migrant women from inter-sectional and immigration detention discrimination and harm is warranted in future EU policy and practice, and should include regular health surveillance, gender sensitive health programming and independent immigration detention inspections by the authorities. Future research on these hidden women also warrants careful consideration, deployment and sensitivity in its approach (Zion, 2013; Newman, 2013; Kronick, 2018; Ziersch, 2017).

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