

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 18 February 2021

Information Document

**Drafting Committee on Migrant Women (GEC-MIG)
3rd meeting, 2-3 March 2021**

**Compilation of the proposed amendments to the sections II to VI
of the Draft Recommendation on migrant, refugee and asylum-
seeking women (provisional title)**

Submitted by member states (from A to M)

List of member states

1. Austria
2. Belgium (in French only)
3. Croatia
4. Denmark
5. Estonia
6. Greece
7. Italy
8. Lithuania

AUSTRIA

EVA FEHRINGER (GEC MEMBER)

12/2/2021
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Strasbourg, 29 January 2021

GEC-MIG (2021) 2

**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

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Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. ~~Recalling~~ Noting the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10 ("Reduce inequality within and among countries"), with the target to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"; and Sustainable Development Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels");
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]
15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on

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As Austria is not a party to the GCM, we suggest to use a more neutral wording such as "noting" instead of "recalling"

any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;

16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, ~~including providing pathways to regularization where applicable;~~
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

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We suggest deleting this phrase as Austria foresees no additional instruments for the regularization of irregular migrants besides those that already exist

Draft Appendix

I. Definitions

For the purpose of this recommendation:

~~'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.~~

'Migrant women' or 'women' includes both women and girls under 18 years of age.

~~'Asylum seeker': a person who intends to make, or who has made, an application for international protection.~~

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

Commented [FE3]: "often in search of a better life" should be deleted. In general this definition poses problems. There is no internationally accepted definition of "migrant". Also the word "settle" might be problematic. A migrant "moves" to another country or even within a country (see IOM). So I suggest rather to delete the definition as a whole. In technical terms migrant is used for statistical purposes having in mind the UN Recommendations for the 2020 censuses of population and housing", Page 136 Economic Commission for Europe (UNECE).
http://pic.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/index.html

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girl¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background and survivors of gender-based violence, trafficking or torture.
4. ~~"Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.~~
5. Within both migrant and host countries and communities, member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

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Suggestion to delete as it does not correspond with the definition under Austrian law (§ 2 Abs. 1 Z 14 Asylum law)

Commented [FE5]: Firewall is an unclear notion and should not be used here.

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", (ECRI General Policy Recommendation N° 16 on safeguarding irregularly present migrants from discrimination - adopted on 16 March 2016.)

- 5.2 implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision-making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
- 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and

by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.

32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;
 - 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;

- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.
46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women should be able to access asylum and protection procedures at designated locations at the borders or in the territory of member States and elsewhere.

53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
- 53.1 ensure that ~~all~~ forms of gender-based violence ~~are~~ can be recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group if the relevant conditions are met;
 - 53.3 provide comprehensive gender-specific guidelines where available for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary and if the women concerned fulfil the criteria for complementary/subsidiary protection.

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access to complementary/subsidiary protection should be given if women fulfil the criteria for complementary/subsidiary protection

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Member States should apply these measures on a voluntary basis

Cross-border measures

58. Member States ~~should~~ can participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
59. Specific assistance and humanitarian resettlement programmes ~~should~~ can be funded for women victims of gender-based violence.
60. Member States ~~should~~ can set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.

63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.
71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
75. Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.

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76. Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States ~~should~~ can take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work where appropriate after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:
- 80.1. take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin ~~retain all~~ do not unjustifiably lose their acquired rights.

Commented [KP8]: Member States should apply these measures on a voluntary basis.

Commented [KP9]: Removing barriers to work after a length of time might not always be appropriate, e.g. when an asylum-seeker does not properly cooperate with the authorities and hinders progress of procedures.

Commented [KP10]: A wording suggesting unrestricted retention of all rights under every circumstances seems too broad. Taken seriously, it would mean a disproportionate preferential treatment compared to all other groups such as nationals of the member states, whose retention of rights is also subject to conditions laid down in law.

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.
83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.
84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.

85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunion for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 86.1. adopt a wide definition of 'family' that refers to the nuclear family, consistent with the links and dependencies relied on by migrant women;
 - 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right, if they fulfil the criteria; and
 - 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

Commented [FE11]: This chapter contains many unclear notions and has to be revisited. At this stage AT has a reservation concerning this point.

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.
89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
- 89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;
 - 89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.
90. Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

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CONSEIL DE L'EUROPE

Strasbourg, 29 janvier 2021

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**Comité de rédaction
sur les femmes migrantes (GEC-MIG)**

**Projet de recommandation sur les femmes migrantes, réfugiées et
demandeuses d'asile (*titre provisoire*)**

Projet de recommandation sur [Saint-Siège : Protéger les droits des] femmes migrantes, réfugiées et demandeuses d'asile [Belgique : et de protection internationale] (titre provisoire)

1. Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,
2. Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses États membres, notamment en promouvant des normes communes et en développant des actions dans le domaine des droits humains ;
3. Rappelant que l'égalité entre les femmes et les hommes est essentielle pour assurer la protection des droits humains, le fonctionnement de la démocratie et la bonne gouvernance, le respect de l'État de droit et la promotion du bien-être de toutes et tous;
4. Considérant les profonds changements dans les formes de migration et la situation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, le fait que le nombre de personnes déplacées a atteint un niveau record ces dernières années et les évolutions significatives dans les concepts, politiques et instruments juridiques liés à l'égalité entre les femmes et les hommes, à la migration et l'asile à tous les niveaux;
5. Souhaitant de ce fait revoir et mettre à jour sa Recommandation n° R(79)10 aux États membres concernant les femmes migrantes, désormais remplacée par le présent instrument ;
6. [Notant avec appréciation les efforts et les activités entrepris par les États pour répondre aux besoins des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;]
7. Ayant à l'esprit la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales (STE n° 5, 1950) et ses Protocoles et à la lumière de la jurisprudence pertinente de la Cour européenne des Droits de l'Homme, la Charte sociale européenne (STE n° 35, 1961, révisée en 1996, STE n° 163), la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (STCE n° 197, 2005), la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels (STCE n° 201, 2007) et la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (STCE n° 210, Convention d'Istanbul, 2011);
8. Rappelant la Convention des Nations unies relative au statut des réfugiés (1951) ; la Convention 189 de l'Organisation internationale du travail sur le travail décent pour les travailleuses et travailleurs domestiques (2011); la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes ("CEDEF", 1979) et son protocole facultatif (1999), ainsi que la Recommandation générale n° 30 de la CEDEF sur les femmes dans la prévention des conflits, les situations de conflit et d'après-conflit (2013), la Recommandation générale n°32 de la CEDEF sur les dimensions sexospécifiques du statut de réfugié, de l'asile, de la nationalité et de l'apatridie des

femmes (2014) , la Recommandation générale n°35 de la CEDEF sur la violence à l'égard des femmes fondée sur le genre, qui met à jour la Recommandation générale n°19 (2017) et la Recommandation générale n° 38 sur la traite des femmes et des filles dans le contexte des migrations mondiales (2020); la Convention des Nations Unies sur les droits de l'enfant (1989) et ses protocoles facultatifs (2000) ; et la Convention des Nations Unies relative aux droits des personnes handicapées (2006);

9. [Rappelant les mesures pertinentes contenues dans le Pacte mondial des Nations unies pour les réfugiés (2018) et dans le Pacte mondial des Nations unies pour des migrations sûres, ordonnées et régulières (2018), visant à promouvoir l'égalité entre les femmes et les hommes et l'autonomisation des femmes et des filles migrantes, réfugiées et demandeuses d'asile et à mettre fin à toutes les formes de violence sexuelle et fondée sur le genre, à la traite des êtres humains, à l'exploitation et aux abus sexuels, et aux pratiques néfastes ;]
10. Vues les "Directives sur la protection internationale de l'Agence des Nations Unies pour les réfugiés : Persécution fondée sur le genre dans le contexte de l'article 1A(2) de la Convention de 1951 et/ou de son Protocole de 1967 relatif au statut des réfugiés", du 7 mai 2002 ;
11. Tenant compte de la Stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes 2018-2023 et de son objectif stratégique de protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;
12. Agissant conformément au Plan d'action du Conseil de l'Europe sur la protection des personnes vulnérables dans le contexte des migrations et de l'asile en Europe (2021-2025) et notamment, à son objectif stratégique consistant à identifier les vulnérabilités et à y remédier tout au long des procédures d'asile et de migration.
13. Reconnaissant la réalité multi-dimensionnelle des situations des femmes et des filles migrantes, réfugiées et demandeuses d'asile et gardant à l'esprit l'importance d'une mise en œuvre et d'un impact généraux de l'Agenda 2030 des Nations unies pour le développement durable, notamment l'objectif 5 de développement durable ("Réaliser l'égalité des sexes et l'autonomisation de toutes les femmes et de toutes les filles"), l'objectif 10 de développement durable ("Réduire les inégalités dans les pays, et d'un pays à l'autre"), avec pour cible de "faciliter des migrations et une mobilité des personnes ordonnées, sûres, régulières et responsables, notamment par la mise en œuvre de politiques migratoires planifiées et bien gérées", et l'objectif 16 de développement durable ("Promouvoir l'avènement de sociétés pacifiques et inclusives aux fins du développement durable, assurer l'accès de tous à la justice et mettre en place, à tous les niveaux, des institutions efficaces, responsables et ouvertes à tous") ;
14. Rappelant les recommandations suivantes du Comité des Ministres aux États membres du Conseil de l'Europe : Recommandation Rec(2002)5 sur la protection des femmes contre la violence ; Recommandation CM/Rec(2010)10 sur le rôle des femmes et des hommes dans la prévention et la résolution des conflits et la consolidation de la paix ; Recommandation CM/Rec(2015)1 sur l'intégration interculturelle, Recommandation CM/Rec(2019)1 sur la

prévention et la lutte contre le sexisme [ainsi que les résolutions et recommandations pertinentes de l'Assemblée parlementaire, du Congrès des pouvoirs locaux et régionaux et de la Conférence des OING du Conseil de l'Europe;]

15. Réaffirmant que tous les droits humains et les libertés fondamentales sont universels, indivisibles, interdépendants et intimement liés, et qu'il est nécessaire de garantir leur pleine jouissance sans aucune discrimination, par les femmes et les filles migrantes, réfugiées et demandeuses d'asile ;
16. Notant avec inquiétude que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent être confrontées à des formes multiples et intersectionnelles de discrimination dans leur pays d'origine, au cours de leur voyage et dans leur pays de destination et soulignant la nécessité d'une approche inclusive et intersectionnelle qui tienne compte des différentes situations et caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;
17. Reconnaissant que si les normes internationales de protection des droits humains s'appliquent à toutes les personnes, des efforts supplémentaires devraient être entrepris pour évaluer les déficits en matière de prévention et de protection résultant des insuffisances dans la mise en œuvre de ces normes, dans l'information concernant ces dernières et dans le contrôle des normes et politiques existantes relatives aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile ;
18. Reconnaissant avec une profonde préoccupation que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont des personnes vulnérables souvent exposées à des formes graves de violences fondées sur le genre dans leur pays d'origine, au cours de leur voyage, en transit et/ou dans les pays de destination, ce qui constitue une grave violation de leurs droits humains, et qu'elles sont confrontées à des difficultés et des barrières structurelles pour surmonter cette violence;
19. Reconnaissant la contribution positive que les femmes et les filles migrantes, réfugiées et demandeuses d'asile apportent aux sociétés et communautés en Europe,
20. Conscient des obstacles liés au genre auxquels sont confrontées les femmes et les filles migrantes, réfugiées et demandeuses d'asile en termes d'intégration, de participation, d'égalité d'accès aux droits, aux services, à la prise de décision et à une participation significative, et de la nécessité de faciliter leur intégration et leur pleine participation à la vie économique, sociale, civique, politique et culturelle, [notamment en offrant des voies de régularisation le cas échéant;]
21. Recommande aux gouvernements des États membres :
 1. de prendre des mesures législatives et autres pour promouvoir et appliquer les lignes directrices figurant à l'annexe de la présente recommandation, visant à garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent effectivement accéder à leurs droits et les exercer ;

2. de veiller à ce que la présente recommandation, y compris son annexe, soit traduite et diffusée (dans des formats accessibles) auprès des autorités compétentes et des parties prenantes qui sont encouragées à prendre des mesures visant à sa mise en œuvre;
3. de suivre les progrès dans la mise en œuvre de la présente recommandation et d'informer régulièrement le(s) comité(s) directeur(s) et les organes compétents du Conseil de l'Europe des mesures prises et des progrès réalisés dans ce domaine.

Projet d'annexe

I. Définitions

Aux fins de la présente recommandation :

« **Migrant** » : personne qui quitte un pays ou une région pour s'installer dans un autre, souvent à la recherche d'une vie meilleure, y compris les citoyennes/citoyens d'États membres du Conseil de l'Europe issu-e-s de l'immigration, ainsi que les femmes et les filles apatrides.

« **Femmes migrantes** » ou « **femmes** » inclut les femmes et les filles de moins de 18 ans.

« **Demandeuse/demandeur d'asile** » : personne qui a l'intention de présenter ou qui a présenté une demande de protection internationale.

« **Protection internationale** » : Protection en tant que réfugié-e au titre de la Convention de Genève de 1951 relative au statut des réfugiés, telle que modifiée par son protocole de 1967 (ci-après "Convention de 1951") ou toute autre forme de protection internationale ou européenne, humanitaire, subsidiaire ou temporaire.

« **Réfugié-e** » : personne répondant à la définition de l'article 1(A)(2) de la Convention de 1951.

II. Questions horizontales

1. Les États membres devraient prendre en compte les questions horizontales mentionnées ci-dessous pour toutes les mesures proposées dans la présente annexe.

Non-discrimination, intersectionnalité, élimination des stéréotypes

2. Les États membres devraient veiller à ce que toutes les mesures applicables soient garanties sans discrimination aucune, y compris celles visant à protéger les droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile¹ victimes de violences fondées sur le genre et de traite des êtres humains.
3. Les États membres devraient appliquer une approche intersectionnelle à toutes les mesures visées dans la présente annexe, en tenant compte notamment des besoins spécifiques des femmes et des filles vivant avec un handicap, des filles, des femmes âgées, des femmes enceintes et allaitantes, des femmes voyageant seules ou avec des enfants, des femmes lesbiennes, bisexuelles et transgenres, des femmes issues de minorités ethniques ou d'autres minorités et des survivantes de la violence fondée sur le genre, de la traite ou de torture.
Proposition d'amendement II. 3 : changer « de la violence fondée sur le genre » par « des violences fondées sur le genre »
4. Créer des "pare-feu"² entre le statut juridique des femmes sans-papiers et leurs droits d'accès à la justice, à la protection, à la santé et à l'éducation.

¹ Ci-après groupées sous la terminologie « femmes migrantes ».

² Les pare-feux sont des "mesures visant à empêcher les acteurs des secteurs public et privé de dénier effectivement les droits de l'homme aux migrants en situation irrégulière y interdisant clairement le partage des données personnelles ou d'autres informations sur les personnes soupçonnées de présence ou de travail irréguliers avec les autorités d'immigration aux fins de contrôle et de répression de

5. Au sein des pays et des communautés d'accueil et de migrant-e-s, les États membres devraient:
- 5.1 accorder une attention particulière aux mesures visant à démanteler les stéréotypes de genre et autres formes de stéréotypes, notamment ceux fondés sur le statut de migrant-e, la culture, la tradition et la religion ;
 - 5.2 mener des campagnes de sensibilisation et d'éducation afin de promouvoir l'égalité de genre.

Filles

6. Les États membres devraient adopter une approche fondée sur les droits de l'enfant à l'égard des filles migrantes, demandeuses d'asile et réfugiées, qui tienne compte de l'âge ainsi que de la situation et des besoins spécifiques des filles, y compris, garantir des solutions alternatives de prise en charge appropriées et sûres lorsqu'elles sont séparées de leurs parents ou de la/des personne(s) qui s'occupe(nt) d'elles.
7. En raison de la vulnérabilité accrue des filles migrantes à l'exploitation et aux abus, les solutions de prise en charge devraient être alignées sur celles des enfants non migrants et dans les institutions ou services de protection de l'enfance classiques. Les enfants non accompagnés et séparés devraient se voir attribuer un-e tuteur/tutrice.
8. Les États membres devraient garantir un accès continu aux services essentiels pour les jeunes femmes réfugiées lorsqu'elles atteignent l'âge adulte, y compris un soutien à leur intégration et à leur participation sociale et un soutien à leur transition vers l'âge adulte au-delà de 18 ans. Le but est d'éviter, le cas échéant, une interruption brutale de l'accès à l'éducation, aux soins de santé, aux services sociaux et d'intégration dans les communautés d'accueil.

Proposition d'amendement II. 6 : remplacer le terme « jeunes femmes réfugiées » par « jeunes femmes migrantes »

Information, autonomisation, sensibilisation et promotion des droits humains

9. Afin d'autonomiser les femmes et filles migrantes et de leur permettre d'accéder à leurs droits, il convient de leur fournir des informations et des conseils pertinents, accessibles et culturellement adaptés, dans une langue qu'elles comprennent, couvrant :
 - 9.1 leurs droits humains fondamentaux et leurs obligations tels qu'ils sont énoncés dans la Convention européenne des droits de l'homme et autres instruments pertinents, y compris lorsqu'elles se trouvent dans des centres de détention et d'accueil ;
 - 9.2 les mécanismes de signalement et de plainte en cas d'abus par des autorités publiques ou des entreprises privées agissant au nom de l'État, y compris les droits aux recours civils et à l'indemnisation ;
 - 9.3 la protection contre toutes les formes de violence, y compris la violence domestique et la traite des êtres humains. Cela inclut l'assistance générale et spécifique (c'est-à-dire concernant les procédures juridiques, les structures et

l'immigration”, (Recommandation de politique générale n°16 de l'ECRI sur la protection des migrants en situation irrégulière contre la discrimination - adoptée le 16 mars 2016).

services de soutien, le soutien des ONG et l'aide juridique disponible pour les victimes dans leur pays de résidence).

Questionnement : Pourquoi il y a-t-il une référence à ces deux types de violences ? S'agit-il de références à la Convention d'Istanbul (violences Domestique) et à la Convention de Varsovie (lutte contre la traite des êtres humains) ?

9.4 les services sociaux et allocations disponibles, notamment concernant: la santé, (y compris la santé sexuelle et génésique et le bien-être), l'accès à l'éducation, à la formation linguistique, au logement et à l'emploi, la participation à la vie sociale, politique, économique et culturelle.

10. Les États membres devraient faciliter l'accès des femmes migrantes aux services et connexions numériques, y compris l'internet, en particulier si les services et informations sont disponibles uniquement ou en grande partie sous forme numérique.

Accès à la justice, y compris à l'aide juridique

11. Les femmes migrantes devraient avoir accès aux mécanismes de plainte et aux recours nationaux et internationaux, y compris à l'aide juridique pour exercer effectivement leurs droits et/ou agir en cas de violation de ces droits.

Proposition d'amendement II. 11 :

- ajouter « Les femmes et filles en séjour irrégulier devraient avoir accès aux mécanismes de plainte, notamment auprès des instances de police, sans risquer d'être signalées auprès des institutions étatiques délivrant des « ordres de quitter le territoire ».
- ajouter : « Les femmes migrantes devraient avoir accès à l'aide juridique et à la justice en matière de séjour. »

12. Les États membres devraient veiller à ce que les femmes migrantes bénéficient d'un soutien adéquat en tant qu'accusées, victimes ou témoins tout au long des procédures pénales et civiles.

Proposition d'amendement II. 12 : ajouter à la fin de la phrase « quel que soit leur statut migratoire, sans risquer pour autant une expulsion ou dénonciation de leur statut ».

13. Une approche intersectionnelle et sensible au genre devrait être adoptée pour déterminer la crédibilité des femmes et des filles migrantes dans les procédures judiciaires et administratives, notamment lorsque les décisions ont un impact sur leur statut migratoire.

Détention

14. En cas de recours à la détention - qui doit être une mesure de dernier recours -, des zones sûres séparées devraient être prévues pour les femmes et les filles dans les centres de détention.

15. Des services de santé et d'hygiène tenant compte des spécificités liées à l'âge et au genre ainsi que des activités appropriées devraient être mis à disposition des femmes migrantes dans les lieux de détention pendant la durée de la détention.

16. Les États membres devraient veiller à ce que les mesures d'application de la loi dans les lieux de détention tiennent compte de l'âge et du genre.
17. La présence de femmes devrait être encouragée parmi le personnel de la police des frontières, de la migration et des autres services de police ou ceux chargés des gardes à vue, ainsi que parmi les travailleurs/travailleuses sociaux/socials et les interprètes.

Questionnement : la première version de la résolution contenait cette phrase « Mettre à la disposition des femmes migrantes des lignes d'assistance et des contacts sensibles au genre ». Pourquoi avoir enlevé la référence à un accès à des lignes d'assistances ?
Proposition : ajouter une mention sur l'accès à des informations sur les droits compréhensibles et dans la langue de la personne détenue ainsi qu'un accès à des lignes d'assistance.

Intelligence artificielle, prise de décision automatisée et protection des données

18. Les États membres devraient assurer qu'une évaluation de l'impact sur les droits humains incluant la perspective d'égalité entre les femmes et les hommes soit réalisée avant l'introduction de systèmes liés à l'intelligence artificielle et de systèmes de prise de décision automatisée dans le domaine de la migration.
19. L'utilisation de l'intelligence artificielle et de systèmes automatisés de prise de décision par le secteur public et ses prestataires de services et entreprises sous contrat ne devrait entraîner aucune discrimination, être conforme aux principes de protection de la vie privée, transparente et s'accompagner de mécanismes de gouvernance clairs, dans le cadre de :
- 19.1 la prise de décision en matière de contrôle aux frontières et de l'immigration, y compris en ce qui concerne l'entrée ou le retour ;
 - 19.2 la gestion des migrations, y compris l'utilisation d'informations biométriques ;
 - 19.3 le maintien de l'ordre et la sécurité concernant les femmes migrantes et les services liés à la protection ou à la prévention des crimes ;
 - 19.4 la fourniture de services aux femmes migrantes, notamment en matière de santé, de protection sociale, de logement, d'emploi, de formation linguistique et d'éducation.
20. Les femmes migrantes devraient avoir la possibilité de participer aux discussions sur le développement et le déploiement des nouvelles technologies qui les affectent.
21. Compte tenu de la vulnérabilité des femmes migrantes, la divulgation délibérée ou involontaire de leurs données au sein de la communauté d'accueil ou par transfert vers le pays d'origine pourrait les exposer à de graves violations de leurs droits humains. Les autorités pertinentes devraient donc :
- 21.1 assurer la confidentialité et la sécurité de ces données ;
 - 21.2 accepter de ne pas transférer ces données vers le pays d'origine sans le consentement explicite de la ou des personnes concernées.

Commented [LM1]: Serait-il possible d'obtenir de plus amples informations à ce propos ?

Coopération avec la société civile

22. Les États membres devraient soutenir activement, y compris financièrement et coopérer avec les organisations de femmes migrantes et les organisations de défense des droits des

femmes qui défendent les droits humains universels des femmes migrantes, qui les soutiennent et travaillent à leur autonomisation.

23. Des mécanismes devraient être mis en place pour garantir que les organisations de femmes migrantes soient consultées, en particulier lors de l'élaboration des politiques en matière de migration, d'asile et d'intégration qui les concernent.

Collecte de données, recherche et suivi

24. Les États membres devraient soutenir la collecte de données ventilées par âge et par sexe sur les questions de migration et d'asile, en veillant au respect des exigences applicables en matière de protection des données.
25. La recherche, le suivi et l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devrait être soutenue et dotée de ressources adéquates.
26. Les données collectées et les résultats de la recherche et de l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective de genre devraient être utilisés à tous les niveaux pour le développement et l'ajustement des politiques publiques dans ces domaines.

III. Protection

27. Les États membres devraient protéger les femmes migrantes réfugiées et demandeuses d'asile contre toutes les formes de violence à l'égard des femmes. Cela inclut la violence domestique, le harcèlement sexuel, la violence sexuelle y compris le viol, la traite, les mariages forcés, les crimes commis au nom du prétendu « honneur », l'avortement et la stérilisation forcés, les mutilations génitales féminines, l'exploitation sexuelle, la violence économique, physique et psychologique.

Question :

L'amendement que la Belgique avait soumis dans le cadre du préambule a disparu de cette version. Quelles sont les raisons ?

Proposition d'amendement III. 27 :

Les États membres devraient protéger les femmes migrantes, réfugiées et demandeuses d'asile contre toutes les formes de violence à l'égard des femmes, reconnaissant que celles-ci sont sujettes à un continuum de violences qui leur est spécifique. Ce continuum inclut les violences domestiques, économiques, physiques, psychologiques, institutionnelles, administratives ; le harcèlement sexuel, les violences sexuelles y compris le viol mais également la traite des êtres humains, les mariages forcés, les crimes commis au nom du prétendu « honneur », l'avortement et la stérilisation forcés, les mutilations génitales féminines, la traite des êtres humains, l'exploitation sexuelle et les cyber violences à caractère sexuel.

28. Une approche multi-agences incluant les organisations de femmes migrantes devrait être mise en œuvre en ce qui concerne les questions relatives à leur protection.

Question : Qu'entendez-vous par une approche multi-agence ?

29. Les autorités et le personnel compétent devraient être formés et qualifiés pour leur permettre:
- 29.1 d'identifier rapidement les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui sont victimes de traite et de violence ;
 - 29.2 être conscients des difficultés que les femmes migrantes peuvent rencontrer pour révéler des faits de violence fondés sur le genre, en raison de leur statut migratoire précaire, d'une méconnaissance de leurs droits légaux et de la stigmatisation, et les soutenir à cet égard.
30. Des interprètes professionnel-le-s formé-e-s à la/aux violences fondées sur le genre et à la traite des êtres humains devraient être disponibles pour soutenir les femmes migrantes qui cherchent à se protéger, lors du dépôt de plainte initial, tout au long de la procédure judiciaire et lors des demandes de réparation.
31. Des mécanismes devraient être mis en place dans les institutions publiques et privées, tels que les postes de police, les prisons, les écoles et les hôpitaux, pour permettre le signalement des incidents de violence sexuelle et fondée sur le genre par le personnel et les agent-e-s, y compris l'accès à lignes téléphoniques de soutien sensibles à l'âge et au genre et des procédures d'orientation vers d'autres organismes appropriés et organismes de soins médicaux et psychologiques.
32. Les États membres devraient garantir l'accès des femmes migrantes aux refuges pour les femmes victimes de violence, quel que soit leur statut migratoire.
Proposition d'amendement III. 32 : modifier les termes « garantir l'accès » par « garantir un accès effectif »
33. Des services de soutien généraux et spécialisés, des conseils, un soutien psychologique et des soins de santé, y compris des soins de santé sexuelle et génésique et des soins spécifiques après un viol devraient être mis à disposition des victimes de violence et de traite des êtres humains dans leur pays d'origine, de transit ou de destination, y compris pour les personnes hébergées dans des centres de transit, d'accueil et d'hébergement.
34. L'évaluation et la gestion des risques de violence à l'égard des femmes migrantes devraient être effectuées en tenant spécifiquement compte de leur vulnérabilité accrue éventuelle, du fait de leur statut migratoire précaire et de leurs vulnérabilités intersectionnelles.
35. L'accès à l'aide et à une assistance juridique gratuite devrait être garanti, afin de soutenir les femmes migrantes victimes de violence lors des procédures pénales et civiles, y compris la poursuite des demandes d'indemnisation et de réparation légale contre les auteur-e-s.
Proposition d'amendement III. 38 : proposition d'ajout « et accessible dans la langue de la bénéficiaire » après « gratuite »
36. Les États membres devraient permettre aux femmes migrantes d'accéder aux régimes nationaux d'indemnisation, à l'aide à la réadaptation, aux mesures ou autres programmes visant à l'assistance sociale et à l'intégration des victimes de violence envers les femmes

ou de traite des êtres humains, dans les mêmes conditions que les ressortissant-e-s nationaux/nationales.

37. Les États membres devraient élaborer des mesures spécifiques pour lutter contre l'exploitation sexuelle des femmes migrantes, en particulier la demande de cette exploitation, y compris des mesures punitives, préventives et éducatives.
38. Les États membres devraient veiller à ce que les femmes migrantes ne subissent aucune sanction, y compris la perte de leur statut de migratoire du fait de leur exploitation en tant que victimes de la traite des êtres humains ou de mariages forcés.

~~Proposition d'amendement III. 38 :~~

~~Remplacer « y compris la perte de leur statut de migratoire » par « y compris la perte de leur statut de protection »~~

39. Des mesures devraient être prises pour protéger les femmes migrantes contre le discours de haine et le sexisme.
40. Les États membres devraient veiller à ce que la culture, la coutume, la religion, la tradition ou le prétendu "l'honneur" ne soient pas considérées comme une justification pour toute exploitation ou tout acte de violence à l'égard des femmes ou des filles.

Commented [OJ2]: Je pense que c'est plus restrictif ... pas une bonne idée car quid des regroupement familiaux et autres

Etat d'urgence et gestion des crises

41. Dans les situations de crises de santé publique, de crises humanitaires et de crises liées au changement climatique, les États membres devraient prendre en compte le risque accru de violence, y compris de violence domestique, de pauvreté et de sans-abrisme pour les femmes migrantes et adopter les mesures suivantes :
- 41.1 prendre en considération la situation et les besoins des femmes migrantes dans la gestion des crises et les mesures de relance, y compris en ce qui concerne l'accès aux droits, notamment le droit à la santé ;
- 41.2 veiller à ce que les mesures prises pendant une crise et pendant l'état d'urgence qui s'ensuit soient conformes aux obligations internationales relatives aux droits humains des femmes migrantes ;
- 41.3 assurer la participation des femmes migrantes et des organisations de la société civile concernées à la prise de décision et à l'élaboration des politiques dans ces situations.

Amendement : III. 41 :

- ajout d'un « s » au terme « liées »
- ajout du risque « d'exploitation sexuelle » aux risques cités « le risque accru de violence, y compris de violence domestique, de pauvreté et de sans-abrisme »

IV. Arrivée

Informations préalables à l'arrivée

42. Les États membres devraient veiller à ce que les procédures d'immigration, y compris avant l'arrivée, notamment les procédures de délivrance des visas, soient sensibles à l'âge et au genre.

Demande d'explication : qu'entendez-vous par « sensible à l'âge et au genre » ? Des informations sur les différentes procédures ciblées et adaptées en fonction du genre et de l'âge du public destinataire ? Qu'entendez-vous par « des procédures d'immigration préalable à l'arrivée, étant sensibles à l'âge et au genre » Est-ce possible d'apporter des exemples pour nous permettre d'avoir une meilleure compréhension ?

43. Des informations devraient être fournies aux femmes migrantes concernant les conditions permettant l'entrée et le séjour légaux sur le territoire d'un État membre.

Installations de transit et d'accueil

44. Les autorités compétentes devraient veiller à ce que les modalités d'accueil et de filtrage tiennent compte des spécificités liées à l'âge et au genre. Le processus de filtrage devrait, en particulier, faciliter l'identification des victimes de traite et de violence fondée sur le genre le plus tôt possible et assurer que les demandes de protection des femmes soient traitées avec diligence.

Proposition d'amendement IV. 44 :

- Proposition d'ajout des termes « et vulnérabilités » après les mots « des spécificités »
- Mettre « violence fondée sur le genre » au pluriel > « violences fondées sur le genre »

45. Les centres d'accueil et d'hébergement devraient être situés dans des zones où les femmes sont en sécurité et peuvent accéder aux services appropriés, notamment aux services de santé, à l'assistance sociale et juridique, aux écoles et aux commerces.

46. Les besoins particuliers et les préoccupations liées à la sécurité des victimes de violence sexuelle, de violence domestique, de traite des êtres humains, de torture ou d'autres formes de violence physique et psychologique et tout autre besoin pertinent par exemple en cas de grossesse, de handicap ou de besoins de santé spécifiques devraient être pris en compte lors de la détermination des placements et de l'accès aux services.

Proposition d'amendement IV 46: mettre les termes « violence » au pluriel : violences sexuelles, violences domestiques ; d'autres formes de violences physiques et psychologiques.

47. Le personnel devrait être formé aux droits humains des femmes et aux questions liées à l'égalité entre les femmes et les hommes, et la présence de [femmes] travailleuses sociales, interprètes, officières de police et gardiennes professionnelles devrait assurée dans ces établissements.

Questionnement : pourquoi employer les termes « droits humains des femmes » et pas simplement droits humains ?

Proposition d'amendement IV 47 :

- Ajouter « ainsi qu'aux spécificités des violences basées sur le genre et des besoins spécifiques des femmes et filles migrantes » après « l'égalité entre les femmes et les hommes.
- ajouter les termes « tant que possible » après le mot « assurée » > [...] et gardiennes professionnelles devrait assurée tant que possible dans ces établissements.

48. Des espaces de couchage séparés pour les femmes seules avec ou sans enfants (jusqu'à 18 ans) ainsi que des espaces sûrs et des salles de bain et des toilettes propres, séparées et bien éclairées devraient être disponibles pour les femmes.

Proposition d'amendement IV 48: Ajouter en début de phrase : « Prévoir un accueil sensible au genre en ce qui concerne l'infrastructure avec des espaces de couchages séparés [...] »

49. Les femmes qui se trouvent dans des centres de transit et d'accueil devraient avoir accès à un système de plainte dans le cadre duquel les plaintes font l'objet d'une enquête et sont transmises à la police le cas échéant, y compris, s'il y a lieu, accès à l'aide juridique ; des visites régulières par des officier-e-s de justice et des tribunaux mobiles devraient également être assurées.

50. Dans les cas où des prestataires de services sont engagés par un État membre pour fournir des services et un logement aux femmes migrantes, des procédures devraient être mises en place, y compris des visites de contrôle régulières par des fonctionnaires de l'immigration formé-e-s, afin de garantir le respect des normes de protection des victimes de violence.

Demande d'explication de cette fin de phrase. (VI. 50)

Asile

51. Les États membres devraient adopter et mettre en œuvre des lois, des pratiques et des procédures d'asile sensibles au genre.

52. Les femmes devraient avoir accès aux procédures d'asile et de protection aux frontières et ailleurs.

Demande d'explication de cette phrase. (VI. 52). Est-ce en lien avec la possibilité d'obtenir un visa humanitaire par exemple ?

53. Pour assurer que la/les violences fondées sur le genre soit bien prise en compte dans le cadre de la Convention de 1951, les États membres devraient :

53.1 veiller à ce que toutes les formes de violence fondée sur le genre soient reconnues comme une forme de persécution au sens de l'article 1A, paragraphe 2, de la Convention de 1951 ;

Proposition d'amendement : VI. 53 : Mettre « violence fondée sur le genre » au pluriel. Idem pour les prochains emplois des termes « violence fondée sur le genre »

53.2 garantir une interprétation sensible au genre des "motifs" d'asile de la Convention de 1951, y compris la reconnaissance du genre comme base de l'existence d'un groupe social particulier ;

53.3 fournir des lignes directrices relatives au genre complètes pour toutes les étapes de la procédure d'asile, y compris les services d'accueil et de soutien, le filtrage, la détermination des pays "sûrs", la détention, la détermination du statut, la décision et les retours ;

53.4 veiller à ce que la police des frontières, le personnel en charge de l'immigration, de l'asile, les responsables et les interprètes reçoivent une formation concernant les lignes directrices mentionnées au paragraphe [53.3].

54 Des agentes d'asile devraient être à la disposition des demandeuses.

~~Proposition d'amendement IV 51: ajouter les termes "tant que possible" après le mot agente -> Des agentes devrait tant que possible être à la disposition des demandeuses~~

55 Des entretiens séparés pour les femmes et les hommes d'une même famille en l'absence d'enfants devraient être possibles et la confidentialité de ces entretiens assurée.

56 Lors du traitement et de la détermination des demandes d'asile, il convient de tenir compte des éléments suivants :

56.1 la situation personnelle de la personne faisant la demande ; et

56.2 les informations pertinentes et sexospécifiques sur le pays d'origine, notamment sur l'accès à la justice, y compris le cadre juridique et sa mise en œuvre, sur les aides sociales, économiques et autres disponibles, et sur toute discrimination et/ou attitude patriarcale que les femmes sont susceptibles de rencontrer.

57 Les États membres devraient veiller à ce que les femmes aient accès à une protection complémentaire/subsidaire si nécessaire.

Mesures transfrontalières

58 Les États membres devraient participer à des programmes de réinstallation et de relocalisation, et mettre en place des voies légales pour assurer un transit sûr pour les femmes et les filles.

Proposition d'amendement IV 58 : ajout du terme « renforcer » > « renforcer la mise en place de voies légales »

59 Des programmes spécifiques d'assistance et de réinstallation humanitaire pour les femmes victimes de violences fondées sur le genre devraient être financés.

60 Les États membres devraient mettre en place et appliquer des mécanismes de protection transfrontaliers efficaces pour les victimes de violences fondées sur le genre.

V. Résidence et intégration

Accès aux services de soins de santé, y compris les soins de santé sexuelle et génésique

61 Les autorités devraient assurer de la prise en compte de l'âge et du genre lors de la fourniture des soins de santé.

62 Des services de santé abordables, de qualité et sensibles au genre devraient être fournis aux femmes migrantes quel que soit leur statut migratoire, sur la même base que pour les ressortissant-e-s nationaux/nationales ; cela inclut les soins de santé mentale, de santé sexuelle et génésique, y compris pendant la grossesse ainsi que les produits d'hygiène. Cet accès ne doit pas être subordonné à l'obtention d'une autorisation de l'autorité migratoire, d'un conjoint, partenaire, autre parent ou tuteur/tutrice.

Commented [LM3]: Je suis pour ne pas mettre cet amendement

Commented [OJAR3]:

Commented [OJSR3]:

- 63 Les filles migrantes devraient avoir accès à des informations et des services de santé sexuelle et génésique adaptés à leur âge.
- 64 En tenant compte des barrières linguistiques et culturelles, les Etats membres devraient veiller à ce que les femmes et les jeunes filles donnent leur consentement préalable, libre et éclairé à tout traitement médical.

Services sociaux, sécurité sociale et logement

- 65 Dans toutes les décisions relatives à la sécurité et au bien-être des femmes migrantes, y compris les décisions prises par les services sociaux et en matière de sécurité sociale, leurs besoins devraient être la première considération.
- 66 Les États membres devraient assurer que les femmes migrantes bénéficient d'un traitement non moins favorable que celui accordé aux ressortissant-e-s nationaux/nationales en ce qui concerne l'accès au logement et les loyers.

Intégration, participation sociale, culturelle et politique

- 67 Les États membres devraient veiller à ce que tout enfant né d'une femme apatride sur leur territoire ait le droit de faire enregistrer sa naissance et de se voir accorder la citoyenneté.
- 68 Du fait des stéréotypes persistants et des inégalités existantes en matière d'accès aux droits civiques et de participation à la prise de décision politique, qui sont encore plus marqués pour les femmes migrantes, les Etats membres devraient prendre des mesures pour que les femmes migrantes qui ont le droit de voter et de se présenter aux élections locales, régionales, nationales ou européennes connaissent leurs droits et soient encouragées à participer
- 69 Reconnaissant que la capacité à communiquer dans la langue du pays d'accueil est essentielle à l'intégration sous tous ses aspects, les États membres devraient assurer une formation linguistique aux femmes et aux filles migrantes et ainsi, promouvoir leur autonomisation et leur protection.
- 70 Les autorités devraient encourager et soutenir les initiatives visant à renforcer l'autonomie des femmes et des filles migrantes au sein de leur famille, de leur communauté et de la société dans son ensemble, en développant leur confiance en elles et leur autodétermination et en protégeant les femmes et les filles contre un contrôle social négatif. Cela pourrait inclure la participation à des associations locales, culturelles, de femmes ou autres, à des clubs sportifs, à des clubs de jeunes et autres.
- 71 Des programmes publics et privés de coaching, de mentorat et d'autres formes de soutien visant les femmes et les filles migrantes devraient être soutenus et mis en œuvre et l'utilisation de modèles positifs promue.
- 72 La contribution positive des femmes migrantes à la société devrait être mise en évidence et encouragée.

Éducation, formation professionnelle et apprentissage tout au long de la vie

- 73 Les autorités devraient prendre des mesures pour atteindre les filles migrantes qui ont pu être empêchées d'accéder à l'éducation dans leur pays d'origine, en fournissant des services d'éducation ou de crèches, de préférence dans les structures éducatives générales.

- 74 Les États membres devraient prendre des mesures pour faciliter la reconnaissance et la validation des qualifications professionnelles et universitaires ainsi que de l'expérience professionnelle existantes des femmes migrantes dans la pratique, notamment en s'inspirant du Passeport européen de qualifications pour les réfugié-e-s du Conseil de l'Europe.
- 75 Des cours d'alphabétisation, de langue et de compétences numériques devraient être fournis aux femmes migrantes, adaptés à leurs besoins et le plus tôt possible après leur arrivée dans le pays d'accueil.
- 76 Les femmes migrantes devraient bénéficier de toutes les possibilités d'éducation supérieure ou complémentaire, de formation professionnelle, de recyclage et de réadaptation offertes par les services compétents et disponibles pour les ressortissant-e-s nationaux/nationales.

Emploi

- 77 Les États membres devraient prendre des mesures spécifiques et ciblées pour promouvoir l'accès à l'emploi des femmes migrantes à un stade précoce du processus de migration, y compris des voies d'accès à l'emploi sûres et légales avant l'arrivée.
- 78 Les États membres devraient envisager de supprimer les obstacles au travail après qu'une femme demandeuse d'asile a été présente sur son territoire pendant un certain temps.

Proposition d'amendement V 78 : changer le terme a été présente par > « ait » été présente

- 79 Les États membres devraient mettre en œuvre les dispositions des normes nationales et internationales pertinentes visant à protéger les femmes migrantes travailleuses domestiques de la discrimination et des abus.
- 80 Concernant les femmes migrantes qui sont autorisées à travailler en vertu de la législation nationales des États membres, ceux-ci devraient :
- 80.1 prendre des mesures pour réglementer et améliorer les conditions de travail des femmes migrantes et pour éliminer toutes les formes d'exploitation et de discrimination ;
 - 80.2 soutenir et aider les femmes migrantes à accéder au marché du travail par le biais du travail indépendant et de l'entrepreneuriat en leur offrant les mêmes possibilités de formation, de microcrédit, de prêts de démarrage et de développement d'entreprise qu'aux travailleurs/travailleuses nationaux/nationales et soutenir les programmes de volontariat, de stages et de placement ;
 - 80.3 afin de faciliter l'accès au marché du travail, prendre des mesures pour garantir que les travailleuses et travailleurs migrant/es aient accès aux mesures de conciliation de la vie professionnelle et de la vie privée, y compris le congé de maternité, de paternité et parental, le travail flexible lorsque cela est possible et garantir l'accès et la jouissance des services de garde d'enfants sur un pied d'égalité avec les travailleurs/travailleuses nationaux/nationales ;

Proposition d'amendement V 80.3 : mettre le terme « migrants » en écriture inclusive

- 80.4 veiller à ce que les travailleuses migrantes licenciées et contraintes de quitter le pays d'emploi ou de retourner dans leur pays d'origine conservent tous leurs droits acquis.

Permis de séjour

- 81 Les États membres devraient veiller à ce que les femmes et les jeunes filles migrantes qui obtiennent un permis de séjour sur la base d'un lien familial bénéficient des mêmes droits sociaux, économiques et du travail que le titulaire principal du permis de séjour
- 82 Les femmes migrantes devraient être informées de leur droit à un permis de séjour indépendant renouvelable, par exemple en raison de leur statut de victime de la traite des êtres humains, de victime de violences fondées sur le genre, de rupture d'une relation ou d'autres circonstances particulièrement difficiles.
- 83 Les États membres devraient veiller à ce que les femmes migrantes obtiennent un permis de séjour si leur séjour est nécessaire pour les besoins d'enquêtes ou de procédures pénales.
- 84 Les États membres devraient faciliter la possibilité pour les victimes de mariage forcé amenées dans un autre pays pour les besoins du mariage et qui, de ce fait, ont perdu leur statut de résidente dans le pays où elles résident habituellement, à conserver ce statut.
- 85 Les femmes migrantes, y compris les femmes apatrides présentes dans un pays depuis longtemps devraient bénéficier de la sécurité de résidence sur une base indépendante.

Regroupement familial

- 86 Reconnaissant que le regroupement familial peut être à la fois une voie sûre vers la sécurité pour les femmes migrantes et un facteur de protection dans le pays d'accueil, les États membres devraient garantir le droit au regroupement familial pour les femmes migrantes conformément aux obligations découlant de la Convention européenne des droits de l'homme et du droit international. Dans cette optique, les États membres devraient :
- 86.1 adopter une définition large de la "famille" qui tienne compte des liens et des dépendances sur lesquels s'appuient les femmes migrantes ;
- 86.2 veiller à ce que les femmes et les jeunes filles soient informées de leur droit au regroupement familial et aient accès à des conseils et à une assistance juridique pour faire valoir ce droit ;
- 86.3 envisager d'accepter ou de demander le transfert des demandes d'asile pour permettre le regroupement familial des femmes et des filles migrantes séparées au cours de leur voyage.

Proposition d'ajout d'un point V. 86.4 : Lors d'un vécu de violences domestiques, Faciliter l'obtention d'un séjour indépendant pour les femmes qui vivent des situations de violences domestiques ou de violence fondée sur le genre et qui dépendraient encore du droit de séjour de leur mari ou père.

VI. Retours

- 87 Si les retours doivent toujours se faire dans la sécurité et la dignité, et de préférence sur une base volontaire, les retours involontaires doivent être conformes au principe de non-refoulement.
- 88 Les États devraient veiller à ce que les femmes migrantes, réfugiées et demandeuses d'asile qui ont besoin de protection, ne soient en aucun cas renvoyées dans un pays où leur vie serait menacée ou où elles pourraient être soumises à la torture ou à des peines ou traitements inhumains ou dégradants, quels que soient leur statut ou leur lieu de résidence.
- 89 Reconnaisant les difficultés particulières que rencontrent les victimes de violences fondées sur le genre pour divulguer pleinement les motifs de leur demande de protection internationale, les États devraient :
- 89.1 garantir un processus sensible au genre qui protège les femmes contre le risque de refoulement ; et
 - 89.2 veiller à ce que les procédures accélérées et non suspensives n'empêchent pas les femmes migrantes de faire valoir leurs demandes de protection, ce qui entraînerait un refoulement.
- 90 Les États membres devraient assurer la suspension des mesures d'expulsion des femmes migrantes en raison de leur statut de personne à charge d'un conjoint, partenaire ou d'un parent, pour leur donner la possibilité de demander un permis de séjour indépendant.

CROATIA

MARTINA BOSAK (GEC member)

11/2/2021
GEC-MIG (2021) 2

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 29 January 2021

GEC-MIG (2021) 2

**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

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Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. [Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees “Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10 (“Reduce inequality within and among countries”), with the target to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”; and Sustainable Development Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”);
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]
15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on

any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;

16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, [including providing pathways to regularization where applicable];
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'Migrant women' or 'women' includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girl¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or other minority background and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.
5. Within both migrant and host countries and communities, member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

Commented [MB1]: Intesex

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", (ECRI General Policy Recommendation N°16 on safeguarding irregularly present migrants from discrimination - adopted on 16 March 2016.)

- 5.2 implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
 - 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and

Commented [MB2]: Harassment and

by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.

32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;
 - 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;

- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.
46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women should be able to access asylum and protection procedures at the borders and elsewhere.

53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
- 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.
63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.

64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.
71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Commented [MB3]: an adequate number of hours of ..

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
75. Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.
76. Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:
 - 80.1. take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.
83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.
84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.
85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunion for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 86.1. adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
 - 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right; and
 - 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.
89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
- 89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;
 - 89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.
90. Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

DENMARK

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16/2/2021
GEC-MIG (2021) 2

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 29 January 2021

GEC-MIG (2021) 2

Drafting Committee
on Migrant Women (GEC-MIG)

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)]

Commented [MT1]: What is the difference between asylum-seeking and international protections seeking? The definition in art. 1 of the Appendix suggests not.

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. [Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10 ("Reduce inequality within and among countries"), with the target to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"; and Sustainable Development Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels");
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]
15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on

any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;

16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, [including providing pathways to regularization where applicable];
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is ~~translated and disseminated (in accessible formats), and translated if relevant,~~ among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

Commented [MT2]: Violence is not per se a human rights violation, as this characterization furthermore requires a state responsibility for the violence.

Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'Migrant women' or 'women' includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

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'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

Commented [MT3]: This definition is too broad, as many of the rights described only apply to migrants registered by the immigration authorities.

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girls' victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or other minority background and survivors of gender-based violence, trafficking or torture.

4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.

5.1. Within both migrant and host countries and communities, member States should:

- 5.1.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

Commented [MT4]: Denmark do not share the view that states should refrain from taking into account the legal status of undocumented women (women not registered by the immigration authorities) in the determination of their rights to health and education. This view cannot be derived from existing international obligations.

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrant and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement". (ECRI General Policy Recommendation No. 10 on safeguarding irregularly present migrants from discrimination – adopted on 16 March 2016)

~~9.2.2~~ implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

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9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 ~~Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.~~
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Commented [MT5]: ECHR and other human rights instruments do not imply any obligations for the individual.

Commented [MT6]: This does not apply to undocumented migrants (migrants not registered by the immigration authorities).

Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
 - 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and

Commented [MT7]: it is unclear to us what this means in the context of the state's obligations. We propose either elaboration or deletion.

by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.

32. Member States should ensure access for ~~migrant~~-refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

Commented [MT8]: If the recommendation implies providing the mentioned groups with an access to shelters without being known to the authorities – we cannot support this as for undocumented migrants.

Commented [MT9]: Migrants with no right to stay in the country will not be integrated but may have a right to reintegration assistance in the country of origin.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;
 - 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;

- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, ~~including those before arrival such as visa issuing procedures,~~ are age- and gender-sensitive ~~where relevant~~.
43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance ~~and~~ schools ~~and shopping facilities~~.
46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum ~~law~~ practices and procedures ~~where relevant~~.
52. Women should be able to access asylum and protection procedures at the borders and elsewhere.

Commented [MT10]: Denmark do not support a recommendation to adopt gender-sensitive asylum laws.

53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
- 53.1 ensure that all forms of gender-based violence are ~~may be~~ recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Commented [MT11]: Gender-based violence will only be recognised as a form of persecution of the authorities in country are unwilling or unable to protect the woman/girl from the prosecution. We suggest deletion or rephrasing as shown.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
- ~~59.~~ Specific assistance and humanitarian resettlement programmes should be ~~funded~~ considered for women victims of gender-based violence.
- ~~60.~~ 59. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

- ~~61.~~ 60. Authorities should ensure that healthcare provision is age and gender sensitive.
- ~~62.~~ 61. Affordable, quality and gender-sensitive health services, ~~encompassing mental, sexual and reproductive healthcare~~, including during pregnancy, as well as hygiene products, should be provided for migrant women ~~on the same basis as for nationals, regardless of their migration status~~. Such access should not be dependent on obtaining the authorisation of the migration authority ~~or of a spouse, partner, parent or other relative, or guardian~~.
- ~~63.~~ 62. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.

Commented [MT12]: We cannot support a recommendation to provide equal access to healthcare for all women regardless of migration status. If migrant women is redefined above to not include undocumented migrants (migrants not registered by the immigration authorities), we can support the sentence as rephrased - if not, we propose deletion of the entire phrase.

Commented [MT13]: If migrant is redefined to not include undocumented migrants (migrants not registered by the immigration authorities), we can accept this, but if not, we suggest deletion.

~~64.63.~~ Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

~~65.64.~~ In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.

~~66.~~ Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Commented [MT14]: We cannot support a recommendation to provide equal access to housing regardless of migration status.

Integration, social, cultural and political participation

~~67.65.~~ Member States should ensure that any stateless child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship. Such an application for citizenship may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

~~68.66.~~ Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.

~~69.67.~~ Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.

Commented [MT15]: This is only relevant for migrant women with a legal stay.

~~70.68.~~ Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.

Commented [MT16]: This is only relevant for migrant women with a legal stay.

~~71.69.~~ Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.

~~72.70.~~ The positive contribution made by migrant women to society should be highlighted and encouraged.

Commented [MT17]: This recommendation is very broadly phrased, however, taking into consideration the context (integration, social, cultural and political participation) such support programmes are only relevant for migrants with a legal stay.

Education, vocational training and life-long learning

~~73.71.~~ Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.

Commented [MT18]: This access depends on migration status.

~~74.72.~~ Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

Commented [MT19]: This access depends on migration status.

~~75.73.~~ Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.

Commented [MT20]: This access depends on migration status.

~~76.74.~~ Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Commented [MT21]: This access depends on migration status.

Employment

~~77.75.~~ Member States should take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.

Commented [MT22]: This is not relevant for undocumented migrants (migrants not registered by the immigration authorities).

~~78.76.~~ After a woman asylum-seeker has been present in the territory for a length of time, Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.

~~79.77.~~ Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.

~~80.78.~~ In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:

~~80.4.78.1.~~ take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;

~~80.2.78.2.~~ support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;

~~80.3.78.3.~~ in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and

~~80.4.78.4.~~ ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Residence permits

~~81.79.~~ Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.

~~82.80.~~ Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.

~~83.81.~~ Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

~~84.82.~~ Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.

~~85.~~ Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Commented [MT23]: Undocumented migrants (migrants not registered by the immigration authorities) will not be granted security of residence solely because she has been in the country for a long time. We suggest the phrase deleted unless migrant women is redefined above.

Family reunification

~~86.83.~~ Recognising that family reunification can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunification for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:

~~86.1-83.1.~~ adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;

~~86.2-83.2.~~ ensure that women and girls are aware of their right to family reunification and receive access to legal advice and assistance to pursue that right; and

~~86.3-83.3.~~ consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

~~87.84.~~ While ~~voluntary returns should be the preferred option to ensure~~ always be in safety and dignity ~~and preferably be done voluntarily~~, involuntary returns must be in line with the principle of *non-refoulement*.

~~88.85.~~ States should ensure that migrant, refugee and asylum seeking women who are in need of protection, ~~regardless of their status or residence~~, are not returned under any circumstances to any a country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

~~89.86.~~ Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:

~~89.1-86.1.~~ ensure a gender-sensitive process that protects women against the risk of *refoulement*;

~~89.2-86.2.~~ ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.

~~90.87.~~ Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

Commented [MT24]: It is unclear what exact situation this recommendation concerns – we need a precision.

ESTONIA KAISA ÜPRUS-TALI (GEC-MIG REPRESENTATIVE) 17/2/2021



GEC-MIG (2021) 2

Strasbourg, 29 January 2021

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**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

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Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. [Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10 ("Reduce inequality within and among countries"), with the target to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"; and Sustainable Development Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels");
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]
15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on

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any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;

16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, [including providing pathways to regularization where applicable;]
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

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Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'Migrant women' or 'women' includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girl¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.
5. Within both migrant and host countries and communities, member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", (ECRI General Policy Recommendation N° 16 on safeguarding irregularly present migrants from discrimination - adopted on 16 March 2016.)

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- 5.2 implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

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Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

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- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.
24. Member States should also take measures to ensure that civil society organisations active in supporting migrants and asylum seekers would have know-how for addressing the specific needs of migrant women, supporting them in defending their rights and empowering them to reach their full potential.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
 - 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.

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30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:

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- 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;
- 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;
- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

- 42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
- 43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

- 44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
- 45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.
- 46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
- 47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
- 48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
- 49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
- 50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

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Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women should be able to access asylum and protection procedures at the borders and elsewhere.
53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
 - 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
 - 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of

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their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.

63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.
71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

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75. Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.
76. Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:
- 80.1. take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.
83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

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84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.
85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunion for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 86.1. adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
 - 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right; and
 - 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.
89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
- 89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;
 - 89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.
90. Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 29 January 2021

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**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on the international protection and safeguard of [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women rights [(provisional title)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its Member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to Member States on women migrants, henceforth replaced by the present instrument;
6. **[Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]**
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and

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CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. **Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls in refugee and host communities, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;**

Commented [V51]: It is important to highlight this aspect since, and according to Un Global Compact on Refugees, we are stressing the obligation of a member state towards the compact even if it is not binding yet

10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;

11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;

12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;

13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10 ("Reduce inequality within and among countries"), with the target to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"; and Sustainable Development Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels");

14. Recalling the following Recommendations of the Committee of Ministers to Member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism **as well as relevant resolutions and recommendations**

of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]

15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;
16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, **[including providing pathways to regularization where applicable;]**
21. Recommends that the governments of Member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe Member States with a migrant background, and stateless women and girls.

'Migrant women' and girls ~~or 'women'~~ includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

Commented [V2]: We propose to refer both to Migrant women and girls, since the needs of girls could be occasionally different and there is additional international legal framework that protects them as children

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girls¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"² should be created between the legal status of undocumented migrant, refugee and asylum seeking women and their rights to access justice, protection, health and education.

Commented [V3]: We could add the definition of the 'internal displaced person', since frequently become refugees or/and migrants and they are of great concern both to UN documents and to academia as a distinctive category

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", (ECRI General Policy Recommendation N° 16 on safeguarding irregularly present migrants from discrimination - adopted on 16 March 2016.)

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5. Within both migrant and host countries and communities, Member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes and discriminations, including those based on migrant and refugee status, culture, tradition and religion.
 - 5.2 implement awareness-raising and education measures to promote gender equality and combat gender-based violence.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum seeking women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse/ or gender-based violence by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of gender-based violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health rights and wellbeing), access to education, language training, vocational training, skills-development training housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant, refugee and asylum seeking women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

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Access to justice including legal aid

11. Migrant, refugee and asylum seeking women should have access to national and international complaint/reporting mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses/bystanders throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration and refugee status.

Commented [V5]: Since their status is different

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - the construction of separate safe zones should be provided/mandatory for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant and refugee women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant and refugee women have access to a complaint/reporting system.
17. The presence of women employees among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant, refugee and asylum seeking women, and services related to protection and/or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant, refugee and asylum seeking women and girls.
20. Migrant women should be given the opportunity to participate in discussions and decision making around the development and deployment of new technologies affecting them.

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21. Bearing in mind migrant, refugee and asylum seeking women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:

21.1 ensure the confidentiality and security of such data;

21.2 agree/commit not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant and refugee women and women's rights organisations which uphold the universal human rights of migrant and refugee women, defend and empower them.

23. Mechanisms should be established to ensure that migrant and refugee women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration, refugee and asylum issues, ensuring compliance with applicable data protection requirements.

Commented [VS6]: The ad hoc reference to its category regarding the collection of data is absolutely necessary

25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.

26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, sexual assault, sexual exploitation, and trafficking, forced marriage, crimes committed in the name of so-called 'honour crimes', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.

Commented [VS7]: We could add a footnote regarding what is provided in the Istanbul Convention

28. A multi-agency approach, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection.

29. Competent authorities and staff should be trained and qualified to enable them to:

29.1 promptly identify, estimation of the risk, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and gender-based violence;

29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration and refugee status, lack of

knowledge of legal rights and social stigmatisation and support them in this regard.

30. Professional interpreters and intercultural mediators trained in gender-based violence and trafficking in human beings should be available to assist migrant, refugee and asylum seeking women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, counselling centres, shelters to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of gender-based violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant, refugee and asylum seeking women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration, refugee status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising free legal aid, should be provided in order to support migrant, refugee and asylum seeking women victims of gender-based violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant, refugee and asylum seeking women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum seeking women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration and refugee status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant, refugee and asylum seeking women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.

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State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, Member States should take into account the increased risk of gender-based violence, including domestic violence, poverty and homelessness for migrant, refugee and asylum seeking women. Member States should therefore adopt the following measures:

41.1 take into consideration the situation and needs of migrant, refugee and asylum seeking women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;

41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant and refugee women;

41.3 ensure the participation of migrant, refugee and asylum seeking women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.

43. Information should be provided to migrant and refugee women about the conditions enabling the legal entry and stay in a Member State's territory.

Commented [VS8]: We recommend to elaborate this part

Transit and reception facilities

44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.

45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.

46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.

47. Staff should be trained in women's human rights and gender equality-related issues and trauma and the presence of professional women social workers/scientists, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

48. Separate sleeping areas/dormitories should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit /shower and toilet facilities for women.

49. Women in transit and reception facilities should have access to a complaint/reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
50. In cases where service-providers are contracted by a Member State to deliver services and accommodation to migrant, refugee and asylum seeking women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women and girls should be able to access asylum and protection procedures at the borders and elsewhere.
53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
- 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-sensitive specific guidelines ~~at~~ for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 56.1 the applicant's own personal circumstances and individual assessment of risk; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.

59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant, refugee and asylum seeking women on the same basis as for nationals, regardless of their migration or refugee status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.
63. Migrant and refugee girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, Member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum seeking women, Member States should take steps to ensure that migrant, refugee and asylum seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.

71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant and refugee girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
75. Literacy, language and digital skills courses should be provided to migrant, refugee and asylum seeking women corresponding to their needs and as soon as possible after their arrival in the host country.
76. Migrant, refugee and asylum seeking women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant and refugee women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum seeking women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant and refugee women who are permitted to work under the national law of member States, the latter should:
 - 80.1. take measures to regulate and improve migrant and refugee women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant and refugee women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant and refugee workers and employees have access to work-life balance measures including maternity, paternity and parental leave, flexible working hours where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and

Commented [V9]: We suggest further development on the ways of implementing this article

- 80.4. ensure that women migrant and refugee workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.
83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.
84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.
85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women, and a protective factor in the host country/state, Member States should safeguard the right to family reunion for migrant and refugee women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 86.1. adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant and refugee women;
- 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right; and
- 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

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89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:

89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;

89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.

90. Member States should ensure the suspension of expulsion measures of migrant and refugee women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

ITALY

Tiziana ZANNINI (GEC MEMBER) —

11/2/2021
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Strasbourg, 29 January 2021

GEC-MIG (2021) 2

**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women and girls (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. [Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees “Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10 (“Reduce inequality within and among countries”), with the target to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”; and Sustainable Development Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”);
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]
15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on

any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;

16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, [including providing pathways to regularization where applicable;]
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'Migrant women' or 'women' includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

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II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girl¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.
5. Within both migrant and host countries and communities, member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", (ECRI General Policy Recommendation N°16 on safeguarding irregularly present migrants from discrimination - adopted on 16 March 2016.)

- 5.2 implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women and girls from all forms of violence against women and girls. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, early and forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
- 29.2 be aware of the difficulties that migrant women and girls may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters and cultural mediators trained in gender-based violence and trafficking in human beings should be available to assist migrant women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.

31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women and girls to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women and girls should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women and girls victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women and girls access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women and girls or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;

- 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;
- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

- 42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
- 43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

- 44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
- 45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.
- 46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
- 47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
- 48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
- 49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
- 50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women should be able to access asylum and protection procedures at the borders and elsewhere.
53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
 - 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
 - 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration**Access to healthcare services, including sexual and reproductive healthcare**

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of

their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.

63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.
71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

75. Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.
76. Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:
 - 80.1. take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women and girls should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.
83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.
85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunion for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
 - 86.1. adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
 - 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right; and
 - 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.
89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
 - 89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;
 - 89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.
90. Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

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COUNCIL OF EUROPE



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Strasbourg, 29 January 2021

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**Drafting Committee
on Migrant Women (GEC-MIG)**

**Draft Recommendation on migrant, refugee and asylum-seeking
women (*provisional title*)**

Draft Recommendation on [Holy See: Protecting the rights of] migrant, refugee, asylum- [Belgium: and international protection] seeking women [(provisional title)]

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on

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trafficking in women and girls in the context of global migration (2020); the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); and the United Nations Convention on the Rights of Persons with Disabilities (2006);

9. [Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]
10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls;
12. Acting in accordance with the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025) notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
13. Recognizing the multidimensional reality of the situations of migrant, refugee and asylum-seeking women and girls and bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development on them, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10 ("Reduce inequality within and among countries"), with the target to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"; and Sustainable Development Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels");
14. Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence; Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, Recommendation CM/Rec(2015)1 on intercultural integration, Recommendation CM/Rec (2019)1 on preventing and combating sexism [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]

15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;
16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, ~~(including providing pathways to regularization where applicable.)~~
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

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8/2/2021

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Draft Appendix

I. Definitions

For the purpose of this recommendation:

'Migrant': a person who leaves one country or region to settle in another, often in search of a better life, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'Migrant women' or 'women' includes both women and girls under 18 years of age.

'Asylum seeker': a person who intends to make, or who has made, an application for international protection.

'International Protection': Protection as a refugee under the 1951 Geneva Convention Relating to the Status of Refugees as amended by its 1967 Protocol (hereafter "1951 Convention") or any alternative form of international or European humanitarian, subsidiary or temporary protection.

'Refugee': a person who meets the definition at Article 1(A)(2) of the 1951 Convention.

II. Horizontal issues

1. Member states should take into account the horizontal issues mentioned hereunder for all measures put forward in this Appendix.

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girls¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.
5. Within both migrant and host countries and communities, member States should:
 - 5.1 pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.

¹ Hereunder regrouped under the terminology "migrant women".

² Firewalls are "measures to prevent state and private sector actors from effectively denying human rights to irregularly present migrants and clearly prohibiting the sharing of the personal data of, or other information about, persons suspected of irregular presence or work, with the immigration authorities for purposes of immigration control and enforcement", ([FCRI General Policy Recommendation N° 16 on safeguarding irregularly present migrants from discrimination](#) - adopted on 16 March 2016.)

- 5.2 implement awareness-raising and education measures to promote gender equality.

Girls

6. Member States should adopt a child rights-based approach to migrant, asylum-seeking and refugee girls, which is age-sensitive and takes account of the specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver.
7. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, care arrangements should be aligned with those for non-migrant children, in mainstream child protection services or institutions. Unaccompanied and separated children should be assigned a guardian.
8. Member States should ensure continued access to essential services for young women refugees as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 - 9.1 Their fundamental human rights and obligations as set out in the European Convention on Human Rights and other relevant instruments, including whilst in detention and reception facilities.
 - 9.2 Reporting and complaint mechanisms, in case of abuse by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation.
 - 9.3 Protection against all forms of violence, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to victims in their residing country).
 - 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, housing and employment, participation in social, political, economic and cultural life.
- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

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11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant women are adequately supported as defendants, victims or witnesses throughout any criminal and civil procedures.
13. An intersectional and gender-sensitive approach should be taken when assessing migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status.

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women.
16. Member States should ensure that law enforcement measures in detention facilities are age- and gender-sensitive, and that migrant women have access to a complaint system.
17. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
 - 21.1 ensure the confidentiality and security of such data;

- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

22. Member States should actively support, including financially, and co-operate with migrant women and women's rights organisations which uphold the universal human rights of migrant women, defend and empower them.
23. Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

24. Member States should support the collection of age- and sex-disaggregated data on migration and asylum issues, ensuring compliance with applicable data protection requirements.
25. Research, monitoring and evaluation of migration, integration and asylum policies from a gender equality perspective, in particular in relation to preventing any violation of women's fundamental rights, should be supported and adequately resourced at all levels.
26. The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be used for the further development and adjustment of public policies in these fields at all levels.

III. Protection

27. Member States should protect migrant, refugee and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
29. Competent authorities and staff should be trained and qualified to enable them to:
- 29.1 promptly identify, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of trafficking and violence;
- 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and

hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.

32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health;
 - 41.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant women;

- 41.3 ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
43. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

44. Relevant authorities should ensure that reception and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of human trafficking and gender-based violence at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
45. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, social and legal assistance, schools and shopping facilities.
46. The specific needs and safety concerns of victims of sexual violence, domestic violence, human trafficking, torture, or other forms of physical and psychological violence and any other relevant special needs for example pregnancy, disability or specific health needs should be taken into account when determining residential placements and access to services.
47. Staff should be trained in women's human rights and gender equality-related issues, and the presence of professional women social workers, interpreters, police officers and guards should be ensured in these facilities.
48. Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as safe spaces and clean, separate, well-lit shower and toilet facilities for women.
49. Women in transit and reception facilities should have access to a complaint system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid and ensuring regular visits by mobile courts and court officers.
50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.

52. Women should be able to access asylum and protection procedures at the borders and elsewhere.
53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
- 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum including the recognition of gender as a basis for the existence of a particular social group;
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants.
55. Separate interviews for women and men from the same family should be made possible, also in the absence of children, and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 56.1 the applicant's own personal circumstances; and to
 - 56.2 relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.
57. Member States should ensure that women have access to refugee status procedure as well as complementary/subsidiary protection, where necessary.

Cross-border measures

58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.
59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

61. Authorities should ensure that healthcare provision is age and gender sensitive.
62. Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the

authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.

63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

65. In all decisions relating to the safety and welfare of migrant women, including decisions taken by social services and in respect of social security, their needs should be the primary consideration.
66. Member States should ensure that migrant women are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

67. Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered and to be granted citizenship.
68. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant women, member States should take steps to ensure that migrant women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate.
69. Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure language training to migrant women and girls and therefore promote their empowerment and protection.
70. Authorities should encourage and support initiatives aimed at empowering migrant women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination and by protecting women and girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.
71. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
72. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should take measures to reach those migrant girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
74. Member States should take steps to facilitate the recognition and validation of migrant women's existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

75. Literacy, language and digital skills courses should be provided to migrant women corresponding to their needs and as soon as possible after their arrival in the host country.
76. Migrant women should be able to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant women, including at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
79. Member States should implement the provisions of relevant national and international standards directed at protecting migrant women carrying out domestic work from discrimination and abuse.
80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:
 - 80.1. take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;
 - 80.2. support and assist migrant women to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for training, microcredit, start-up loans and business development as for national workers, and support volunteering, internship and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that women migrant workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Commented [EB1]: Implementation of this recommendation may be impossible, depending on the acquired rights

Residence permits

81. Member States should ensure that migrant women and girls who are granted a residence permit on the basis of a family relationship are entitled to the same social, economic and labour-related rights and entitlements as the principal residence permit holder.
82. Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.

83. Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.
84. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to retain such status.
85. Migrant women present in a country for a long time, including stateless women and girls should be provided security of residence on an independent basis.

Family reunion

86. Recognising that family reunion can be both a secure pathway to safety for migrant women, and a protective factor in the host state, member States should safeguard the right to family reunion for migrant women in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
 - 86.1. adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
 - 86.2. ensure that women and girls are aware of their right to family reunion and receive access to legal advice and assistance to pursue that right; and
 - 86.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women who are in need of protection, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.
89. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
 - 89.1. ensure a gender-sensitive process that protects women against the risk of *refoulement*;
 - 89.2. ensure that accelerated and non-suspensive procedures do not result in migrant women being unable to put forward their claims for protection, resulting in *refoulement*.
90. Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

