

Strasbourg, 18 February 2021

Information Document

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

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**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 N to Z)**



### **List of member states**

1. The Netherlands
2. Russian Federation
3. Spain
4. Sweden



THE NETHERLANDS BASIM AL ALOUSI (GEC Vice-Chair)

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COUNCIL OF EUROPE

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CONSEIL DE L'EUROPE

Strasbourg, 29 January 2021

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

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**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,

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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 and intersecting 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 and violence 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 girls<sup>1</sup> 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"<sup>2</sup> 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.

<sup>1</sup> Hereunder regrouped under the terminology "migrant women".

<sup>2</sup> 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 gender based violence, 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 explaining this in a for the migrant understandable language and 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 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 one of the main the primary considerations.
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 (a pathway to) 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 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. Consider adopting 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.

RUSSIAN FEDERATION, OLGA OPANASENKO (GEC MEMBER)

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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)**

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**Draft Recommendation on migrant, refugee and asylum-seeking  
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*Realizing at the same time that much remains to be done in this regard*

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

<sup>1</sup> Gender equality entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. (Council of Europe Gender Equality Strategy 2018-2023, p.5).

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Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as *relevant* CEDAW General Recommendations 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 against women, 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 [NB: This Action Plan has not yet been formally approved and is still being discussed within the Committee of Ministers];
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;]

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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;

15bis. Recalling that international law, including the European Convention on Human Rights and Fundamental Freedoms, does not guarantee the right of an alien to enter or to (continue to) reside in a particular country, and that there is a difference in legal status between legal and illegal migrants which must be taken into account;

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;

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2 At the time of the adoption of this Recommendation by the Committee of Ministers, one Member State stated that this document did not reflect a common approach of all Member States and reserved its right to comply or not with the Recommendation.

3 At the time of the adoption of this Recommendation by the Committee of Ministers, one Member State did not agree with a number of provisions of this Recommendation and in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies reserved its right to comply or not with the Recommendation.



19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls *may* bring to European societies and communities;

20. Aware of the ~~gender-related~~ barriers that migrant, refugee and asylum-seeking women and girls face ~~because of their sex; 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 *if appropriate* 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~~ Evaluate progress in the implementation of this Recommendation and ~~regularly~~ inform *if appropriate* 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, any person who changes his or her country of usual residence, with the exclusion of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimages.<sup>4</sup>~~

'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 girls<sup>5</sup> 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 *different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls*. ~~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.~~

(Explanation: in order not to miss any situation or any characteristic we would prefer to keep the text without any concretization and not to

<sup>4</sup> This definition is not meant to be authoritative and corresponds to the definition of "international migrant" by the United Nations Department of Economic and Social Affairs (UN DESA, Recommendations on Statistics of International Migration, Revision 1 (1998) para. 32). Internal migration is not covered by this Recommendation.

<sup>5</sup> Hereunder regrouped under the terminology "migrant women".

enumerate specific groups of migrant, refugee and asylum-seeking women and girls in order to avoid prioritizing some vulnerable groups over others.)

4. ~~“Firewalls” 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.
  - 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. ~~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.~~ *[NB: According to Article 1 of the United Nations Convention on the Rights of the Child, a child*

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6 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.)

means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.]

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### 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 sensitive toward specific situation and needs of migrant women and girls approach should be taken when assessing their migrant women and girls' credibility in judicial and administrative procedures, in particular when decisions have an impact on their migration status. [NB: The meaning of this provision is not clear.]~~

### 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.

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#### 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~~
22. ~~ensure the confidentiality and security of such data in accordance with their national legislation and applicable international obligations;~~
23. ~~agree not to transfer any such data to the country of origin without the explicit consent of the affected person/~~ *[NB: The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data does not impose such limits while providing sufficient guarantees of the privacy of personal data, including for transfer of data across national borders.]*

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#### Co-operation with civil society

24. 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.
25. 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.

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#### 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 physical 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 and other forms of violence.
28. A multi-agency approach, inclusive of migrant women's organisations where necessary, 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 against women 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 against women to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines *for women* 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

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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~~ available 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. *[NB. This appears to be too prescriptive, in particular with regard to "punitive measures to address demand for such exploitation". For example, Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings, which lists measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, does not include "punitive" 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.~~ *[This is too vague. What is meant by "loss of migration status"? If it is implied that persons who were victims of human trafficking may not be considered illegal migrants, neither the Council of Europe Convention on Action against Trafficking in Human Beings nor the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children provide for such an exception.]*
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 where appropriate. *[NB: State of emergency and crisis management are deep within the prerogatives of States, which should be given sufficient margin of appreciation in taking decisions on these critical matters.]*

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## 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~~ *and take into account the specific situations and needs of women and girls.*
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~~ *to age and different situations and personal characteristics of migrant, refugee and asylum-seeking women.* The screening process should, in particular, facilitate the identification of victims of human trafficking and ~~gender-based~~ violence against women at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
45. Reception and accommodation centres should as much as possible 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 *if appropriate* and implement gender-sensitive asylum laws, practices and procedures *taking into account special needs of migrant women and girls.*

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;~~

(Explanation: we see no need in point 53 as the 1951 Convention guarantees rights of all refugees without any specification. We shouldn't in our recommendation call for the new interpretation of already existing international conventions. We also see no need in broadening the scope of the 1951 Convention.)

~~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].~~

53. provide comprehensive *taking account of the specific situations and needs of women and girls* 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;

ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3 54].

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 procedures, where ~~necessary~~ available. *INB. Not all Member States may have*

complementary/subsidiary protection laws, and the granting of such protection is usually subject to a certain procedure and fulfillment of relevant criteria.]

#### 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. *[NB: This is too prescriptive. Whether or not to engage in resettlement and relocation programmes is at the discretion of States. The phrase "legal pathways to ensure a safe transit" is too vague.]*

59. Specific assistance and humanitarian resettlement programmes should be funded/considered 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 against women and girls. *[NB: What is meant by "cross-border protection mechanisms" in this context?]*

## 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 to age and needs of migrant women and girls.

62. Affordable and 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.

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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.

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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 *against women*, 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.

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### 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 against women face in fully disclosing the grounds for their international protection claim, member States should:

89.1. taking account of the specific situations and needs of women and girls 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.



SPAIN

LARA FERGUSON VÁZQUEZ DE PARGA

16/2/2021

GEC-MIG (2021) 2

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 29 January 2021

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

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**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 to protect the rights of migrant, refugee and asylum-seeking women and girls<sup>1</sup>, including for victims of gender-based violence and trafficking in human beings, are secured without discrimination on any ground, including those measures to protect the right of migrant, refugee and asylum-seeking women and girls<sup>2</sup> victim 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, women with mental health problems, drug addiction, and survivors of gender-based violence, trafficking or torture.
4. "Firewalls"<sup>3</sup> 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:

<sup>1</sup> Hereunder regrouped under the terminology "migrant women"

<sup>2</sup> Hereunder regrouped under the terminology "migrant women"

<sup>3</sup> 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.)

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Commented [LF3]: Consider if regrouping migrant, refugee and asylum-seeking women and girls, under "migrant women", is the best choice since it makes refugee and asylum-seeking women as well as girls invisible.

- 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 and sexual orientation and gender identity.
- 5.2 implement awareness-raising and education measures to promote gender equality.
- ~~5.2.3~~ Allocate sufficient resources for training of all relevant personnel on issues related to gender equality, women human's rights and identification of victims of violence.

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### 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, migrants and asylum-seekers 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 against women, including domestic violence and trafficking in human beings. This encompasses general and specific assistance (i.e. legal processes, support structures and services, multi-disciplinary response teams, support from NGOs and legal aid available to victims in their residing host country).
- 9.4 Available social services and welfare, notably: health (including sexual and reproductive health and wellbeing), access to education, language training, cultural immersion courses, housing and employment, participation in social, political, economic and cultural life.

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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, supported by relevant information.
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 perspective with an intersectional 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 an easily accessible and effective 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 ensured 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

<sup>4</sup> See paras. 9 and 10.

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- 19.4 the provision of services - including health, welfare, housing, employment, for victims of gender-based violence, language training and education, cultural immersion - 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, including victims of gender violence, and 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. A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
28. 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.
29. 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.

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**Commented [LF8]:** Psychological support would need to also include psychiatric support. Would mental-health encompass both?

**Commented [LF9]:** Following the previous Draft Structure of the Annex (number 39), we consider that access to health and support services should apply to all migrant women, not only victims of violence and trafficking.

**Commented [LF10]:** Following the previous Draft Structure of the Annex (number 37), we consider that access to free legal aid and assistance should apply to all migrant women, not only victims of violence and trafficking.

30. Measures should be taken to protect migrant women from hate speech and sexism.

~~27.31.~~ 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.

~~28.32.~~ A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.

~~29.33.~~ Competent authorities and staff should be trained and qualified to enable them to:

29.1 promptly identify, where possible, in collaboration with relevant support organisations, 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.

~~30.34.~~ 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.

~~31.35.~~ 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 or trafficking in human beings 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.

~~32.36.~~ Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, including victims of trafficking in human beings, 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.

~~34.37.~~ 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.

~~35.38.~~ 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.

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~~36-39.~~ 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.

~~37-40.~~ 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.

~~38-41.~~ Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of being victims of gender-based violence, 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.

~~40-42.~~ 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

~~41-43.~~ 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 and other forms of violence against women, 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

~~42-44.~~ Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.

~~43-45.~~ 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

~~44-46.~~ 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.

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~~45-47.~~ 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.

~~46-48.~~ 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.

~~47-49.~~ 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.

~~48-50.~~ Separate sleeping areas should be provided for single women with or without children (up to age 18), as well as other safe spaces and clean, separate, well-lit shower and toilet facilities for women as well as hygiene products.

~~49-51.~~ 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, supported by relevant information<sup>3</sup>.

~~50-52.~~ 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

~~54-53.~~ Member States should adopt and implement gender and age-sensitive asylum laws, practices and procedures.

~~52-54.~~ Women should be able to access asylum and protection information<sup>4</sup> and procedures at the borders and elsewhere.

~~53-55.~~ 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].

~~54-56.~~ Women asylum officers should be available to women applicants.

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<sup>3</sup> See paras.9 v 10.

<sup>4</sup> in accordance with paras. 9 and 10.

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~~55-57.~~ 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.

~~56-58.~~ 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.

~~57-59.~~ Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

#### Cross-border measures

~~58-60.~~ Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.

~~59-61.~~ Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.

~~60-62.~~ 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

~~61-63.~~ Authorities should ensure that healthcare provision is age and gender sensitive.

~~62-64.~~ 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.

~~63-65.~~ Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.

~~64-66.~~ 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

~~65-67.~~ 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.

~~66-68.~~ 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

~~67-69.~~ 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.

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Commented [LF17]: We consider that this measure is relevant not only for Asylum but also for women migrants and refugees.

~~68-70.~~ 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, free from discrimination.

~~69-71.~~ 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 and cultural immersion courses to migrant women and girls to ~~and therefore~~ promote their empowerment and protection.

~~70-72.~~ 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.

~~71-73.~~ Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.

~~72-74.~~ The positive contribution made by migrant women to society should be highlighted and encouraged.

#### Education, vocational training and life-long learning

~~73-75.~~ 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.

~~74-76.~~ 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.

~~75-77.~~ 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.

~~76-78.~~ 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

~~77-79.~~ Member States should take specific and targeted measures to avoid discrimination and promote access to employment for migrant women, ~~including also~~ at an early stage in the migration process, including safe and legal routes to employment pre-arrival.

~~78-80.~~ 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.~~

~~80-81.~~ In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:

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Commented [LF18]: We consider this should apply not only to women asylum-seeker but to migrant women, as understood under this Recommendation.

Commented [LF19]: Moved to para. 82 we consider it more specific in content in comparison with the para. that follows.

~~80.1.81.1.~~ take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;

~~80.2.81.2.~~ 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;

~~80.3.81.3.~~ 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

~~81.4.~~ 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.

~~82.~~ 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.

~~80.4.~~

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### Residence permits

~~81.83.~~ 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.

~~82.84.~~ 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.

~~83.85.~~ Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

~~84.86.~~ 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.

~~85.87.~~ 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

~~86.88.~~ 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:

- 86-1-88.1. \_\_\_\_\_ adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
- 86-2-88.2. \_\_\_\_\_ 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
- 86-3-88.3. \_\_\_\_\_ 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

~~87-89.~~ While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.

~~88-90.~~ 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.

~~89-91.~~ Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:

- 89-1-91.1. \_\_\_\_\_ ensure a gender-sensitive process that protects women against the risk of *refoulement*;
- 89-2-91.2. \_\_\_\_\_ 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*.

~~90-92.~~ 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)**

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

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Charlotte ROTH-OLANDERS (GEC-MIG representative)

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**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.

Commented [CRO1]: Delete "regularization" as the word suggests that no individual assessments will be made of reason to stay, including need of protection. If "regularization" is kept, it is vital to also keep "where applicable".

## 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 girl<sup>1</sup> 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 and women travelling alone or with children.
4. "Firewalls"<sup>2</sup> 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 [CRO2]: Clarification of language

Commented [CRO3]: Delete. So-called "firewalls" is a general issue related to persons staying in host country without necessary permits or consent. It is not a gender-related issue or a remedy for women in a vulnerable situation.

<sup>1</sup> Hereunder regrouped under the terminology "migrant women".

<sup>2</sup> 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". (ECN General Policy Recommendation No 11 on safeguarding irregularly present migrants from discrimination, adopted in 16 March 2014.)

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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-children~~, 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.

Commented [CRO4]: Child-rights based approach applies for all children. The rest of the sentence explains that girls' special situations and needs must be addressed.

### 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, and accessible information ~~and culturally sensitive information~~ and advice in a way and 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 [CRO5]: Clarification on "culturally sensitive information and advice" is needed. The same information must be given to all women migrants. "Culturally sensitive" may imply that information could be excluded to some women due to cultural differences in sensitive matters.

**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~~ informing under which conditions data can be transferred to the country of origin.

**Commented [CRO6]:** As a main rule, data on an asylum application must not be shared with the country of origin. However, as an exemption, some data may be transferred for the purpose of identification. It is vital that the applicant is informed about which data that can be transferred.

### 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

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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.

Commented [CRO7]: Clarification is needed. If the intention is that care/support should be given irrespective of where the violence or trafficking took place (country of origin, transit or destination) it should be made clear.

Commented [CRO8]: Expulsion may be a part of a penalty for persons convicted of a serious crime. Loss of migration status is not a penalty.

#### 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.

Commented [CRO9]: Clarification and examples would be valuable. Should information about the application process be age- and gender-sensitive? Or is it information about where to turn to in case of, for example, trafficking?

##### 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.

Commented [CRO10]: Clarification is needed. Adapt text to Member States without a system for mobile courts.

##### 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~~promote 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. Specific attention should be paid within existing~~ resettlement programmes to victims of gender-based violence.
60. Member States should set up and implement effective cross-border protection ~~mechanisms~~ for victims of gender-based violence.

Commented [CRO11]: Clarification is needed. Examples?

## 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 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.

SWEDEN

Charlotte ROTH-OLANDERS (GEC-MIG representative)

16/2/2021\*

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### 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.