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Strasbourg, 18 February 2021

Information Document

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

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

Submitted by permanent observers and international organisations

List of permanent observers

1. Holy See
2. Mexico

List of international organisations

1. UN Women

HOLY SEE

FLAMINIA VOLA

12/2/2021
GEC-MIG (2021) 2

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Strasbourg, 29 January 2021

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

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

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

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

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

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

15. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that their full enjoyment, without discrimination on any ground, by migrant, refugee and asylum-seeking women and girls needs to be guaranteed;
16. Noting with concern that migrant, refugee and asylum-seeking women and girls may be confronted with multiple and intersectional forms of discrimination in their country of origin, during their journey and in their country of destination and stressing the need for an inclusive and intersectional approach that takes into account the different situations and personal characteristics of migrant, refugee and asylum-seeking women and girls;
17. Recognising that while existing international human rights standards apply to all persons, additional efforts should be made to assess the prevention and protection gaps that arise from insufficient implementation, information about and monitoring of existing laws and policies as regards migrant, refugee and asylum-seeking women and girls;
18. Recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are vulnerable persons often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, protection of rights, 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.

HOLY SEE

FLAMINIA VOLA

12/2/2021
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Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

Commented [2]: to be clarified: IDPs not included because the recommendation is addressed to migrant women 'defined as foreign-born or having crossed borders'

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

Commented [u3]: women and girls (under 18 years of age) do not have the same needs.

'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

Commented [4]: "horizontal" clarification of terminology needed

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

Commented [5]: controversial and undefined terminology

¹ Hereunder regrouped under the terminology "migrant women".

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

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

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 with the aim to ensure~~ their right to education, and access to healthcare, social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

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

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Access to justice including legal aid

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

Detention

- ~~14.~~ In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
- ~~15.~~ ADD new para: Protect and respect the rights and best interests of girls at all times, regardless of migration status, promoting alternatives to detention, favouring non-custodial measures and community-based care arrangements, that ensure access to education and health care, and respect the right to family life and family unity.
- ~~14.~~~~16.~~ ADD new para: Where identification of signs of trafficking in persons occurs, ensure that potential victims have access to non-custodial measures and community-based care arrangements.
- ~~15.~~~~17.~~ 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.~~~~18.~~ 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.~~~~19.~~ The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be promoted.

Commented [u6]: it would be better to have some specific paragraph on girls and detention.

Commented [7]: Global Compact on Migration Obj.13 (h)

Commented [8]: GCM and "Palermo protocol" Article 6

Artificial intelligence, automated decision-making, and data protection

- ~~18.~~~~20.~~ 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.~~~~21.~~ 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 girls, and services related to protection or prevention of crimes; and

19.4 the provision of services - including health-care, welfare, housing, employment, language training and education - to migrant women.

~~20-22~~ Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.

~~21-23~~ 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.

Cooperation with civil society

~~22-24~~ 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.

~~23-25~~ 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.

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 and girls may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women and girls to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women and girls should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women and girls victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women 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 and girls, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women and girls 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 distorted practices related to culture, custom, religion and 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 and girls in crisis management and recovery measures, including protection of ~~with respect to access to rights~~, and notably the right to health care;
- 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 and girls;
- 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 care, 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 of women~~ 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.

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50. In cases where service-providers are contracted by a member state to deliver services and accommodation to migrant women and girls, 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 entitled to ~~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.

Commented [u9]: Does the GEC have the mandate to determine the interpretation that is to be done of an International Convention?? This paragraphs should be revised or otherwise cancelled.

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.

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V. Residence and Integration

Access to holistic and quality 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 healthcare 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-sensitive health care 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.

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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 based on good practices of integration.
72. The positive contribution made by migrant women to society and host communities should be highlighted and encouraged.

Commented [11]: (see also: Holy See 20 action points) Enact legal and policy reforms that are necessary to address statelessness effectively, working in the four areas of statelessness – identification, prevention, reduction and protection – and aiming at granting citizenship to children at birth.

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.~~ 79. ADD new para: Take measures which prohibit and actively prevent the abuse of minor workers, ensuring that the work is safe and does not harm their health, well-being or jeopardize their educational opportunities.
- ~~79.80.~~ 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:
- ~~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

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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;

~~80.4.81.5.~~ ADD new para. Take the necessary measures that recognize and allow for the transfer of educational or other credentials earned abroad, in order to facilitate reintegration of returnee women.

Residence permits

~~81.82.~~ 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.

~~82.83.~~ Migrant women and girls should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.

~~83.84.~~ Member States should ensure that migrant women and girls are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

~~84.85.~~ 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.

~~85.86.~~ 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

~~86.87.~~ 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:

~~86.1.87.1.~~ adopt a wide definition of "family" consistent with the links and dependencies relied on by migrant women;

ALT para: adopt measures which expand the scope of family reunification policies to include all family members (including grandparents, siblings and grandchildren) in order to allow the entire family to remain united in the resettlement process;

~~86.2.87.2.~~ 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

~~86.3.87.3.~~ 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

~~87.88.~~ While returns should always be in safety and dignity and preferably voluntary and assisted, involuntary returns must be in line with the principle of *non-refoulement*.

~~88.89.~~ States should ensure that migrant, refugee and asylum seeking women and girls 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.

~~89.90.~~ Recognising the particular difficulties that victims of human trafficking and gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:

~~89.1.90.1.~~ _____ ensure a gender-sensitive process that protects women against the risk of *refoulement*;

~~89.2.90.2.~~ _____ 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*.

~~90.91.~~ Member States should ensure the suspension of expulsion measures of migrant women based on their dependent 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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LORENA ALVARADO QUEZADA

17/2/2021



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Strasbourg, 29 January 2021

GEC-MIG (2021) 2

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

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

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

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

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Commented [AYJ1]: It will be important to consider the General Recommendation No. 26 of the CEDAW Committee on Migrant Workers, published in 2008, since all categories of migrant women fall within the scope of the obligations of the States parties to the CEDAW Convention and therefore ensure that their human rights.

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 in vulnerable persons situations often exposed to serious forms of gender-based violence in their countries of origin, during their journey, in transit and/or in destination countries, which constitute a serious violation of their human rights, and that they face difficulties and structural barriers in overcoming such violence;
19. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls bring to European societies and communities;
20. Aware of the gender-related barriers that migrant, refugee and asylum-seeking women and girls face in terms of integration, participation, equal access to rights, services, leadership and meaningful participation, and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life, [including providing pathways to regularization where applicable;]
21. Recommends that the governments of member States:
 1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

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Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

¹ Hereunder regrouped under the terminology "migrant women".

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

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

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 (including sexual and reproductive health and rights), social and integration services in host communities.

Information, empowerment, awareness raising and promotion of human rights

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

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Commented [AYJ6]: It is suggested to include assistances in workplaces, schools and governmental institutions, not only refer to domestic violence. Particularly when cases of sexual harassment may be present.

Commented [AYJ7]: It is suggested to explicitly refer mental health and support through psychosocial interventions.

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Access to justice including legal aid

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

Detention

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

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
19. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, -be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 19.1 border and immigration control decision- making, including as to entry or return;
 - 19.2 migration management, including the use of biometric information;
 - 19.3 policing and security of migrant women, and services related to protection or prevention of crimes; and
 - 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women and relevant civil society organizations 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 situations of vulnerability, 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~~ and other relevant parameters, 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.
- ~~26-27.~~ The data collected and the results of research and evaluation of migration, integration and asylum policies from a gender equality perspective should be presented as public information; ensuring compliance with applicable data protection requirements.

III. Protection

- ~~27-28.~~ 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.
- ~~28-29.~~ A multi-agency approach, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection.
- ~~29-30.~~ 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.
- ~~30-31.~~ 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.

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~~32~~32~~33~~33 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~~33~~33~~33 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~~34~~34~~34 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~~35~~35~~35 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.

~~34~~36~~36~~36 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~~37~~37~~37 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~~38~~38~~38 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~~39~~39~~39 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~~40~~40~~40 Measures should be taken to protect migrant women from hate speech and sexism.

~~40~~41~~41~~41 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~~42~~42~~42 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, including measures to ensure pathways to regularization.

41.3

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IV. Arrival

Pre-arrival information

42-43. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.

43-44. Information should be provided to migrant women about the conditions enabling the legal entry and stay in a member State's territory.

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Transit and reception facilities

44-45. 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.

45-46. Reception and accommodation centres should be located in areas where women are safe and can access relevant services, including health, particularly sexual and reproductive health care, social and legal assistance, schools and shopping facilities.

46-47. 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.

47-48. 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.

48-49. 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.

49-50. 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.

50-51. 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

~~51.52.~~ Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.

~~52.53.~~ Women should be able to access asylum and protection procedures at the borders and elsewhere.

~~53.54.~~ 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].

~~54.55.~~ Women asylum officers should be available to women applicants.

~~55.56.~~ 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.

~~56.57.~~ 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 form of multiple and intersecting discrimination and/or patriarchal attitudes women are likely to encounter.

~~57.58.~~ Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

~~58.59.~~ Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.

~~59.60.~~ Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.

~~60.61.~~ 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

~~64.62.~~ Authorities should ensure that healthcare provision is age and gender sensitive.

~~62.63.~~ Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of

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

63-64. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.

64-65. 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

65-66. 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.

66-67. 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

67-68. 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.

68-69. Owing to persisting gender 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.

69-70. 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.

70-71. 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.

71-72. Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.

72-73. The positive contribution made by migrant women to society should be highlighted and encouraged.

Education, vocational training and life-long learning

73-74. 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.

74-75. 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.

- 75-76. 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.
- 76-77. 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

- 77-78. 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.
- 78-79. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a length of time.
- 79-80. 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:
- 80-1-81.1. take measures to regulate and improve migrant women's working conditions and to eliminate all multiple and intersecting 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
 - 80-4-81.4. 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.

Residence permits

- 81-82. 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.
- 82-83. 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.

- 82-84. Member States should ensure that migrant women and their dependants are granted a residence permit if their stay is necessary for criminal investigations or proceedings.
- 84-85. 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.
- 85-86. 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

- 86-87. 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:
- 86-1-87.1. _____ adopt a wide definition of 'family', consistent with the links and dependencies relied on by migrant women;
- 86-2-87.2. _____ 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
- 86-3-87.3. _____ consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant women and girls separated on their journeys.

Commented [AYJ9]: It is suggested to also consider the need for psychosocial assistance, given the impact that several risk factors have under the family members.

VI. Returns

- 87-88. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*, as well as with a gender-based perspective.
- 88-89. 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 *gender-based violence*, torture or inhuman or degrading treatment or punishment.
- 89-90. Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:
- 89-1-90.1. _____ ensure a gender-sensitive process that protects women against the risk of *refoulement*;
- 89-2-90.2. _____ 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*.
- 90-91. 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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Commented [AYJ10]: It is suggested to consider that in the case of women and girls, States should not implement this kind of procedures by any circumstances, until an individual assessment of international protection has taken place, especially if there are any signs of gender-based violence.

UN WOMEN

IRIS BJORG KRISTJANSDOTTIR

16/2/2021

GEC-MIG (2021) 2

COUNCIL OF EUROPE



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Strasbourg, 29 January 2021

GEC-MIG (2021) 2

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

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

Commented [BK1]: if applicable.

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, and their leadership capacities and role;
20. Aware of the gender-related (alternatively: gender-specific and any intersectin/intersectional barriers and challenges 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 [BK2]: Rephase to: Are more likely to be exposed to vulnerability and often? To avoid indicating that all migrant women are by default vulnerable (and thus undermine their agency and leadership role, especially those highly skilled – although not the target group of the recommendation)

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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.

Commented [V3]: Perhaps including women and girls
Internal Displaced Persons (IDPs)

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

Commented [BK4]: Possibly add section on:
Access to documentations
Access to services

¹ Hereunder regrouped under the terminology "migrant women".

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

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

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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 and gender-sensitive and takes account of the ~~the any~~ 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 migrant, refugees and asylum seeker as they reach adulthood, including support for their integration and social participation, and support for their transition to adulthood beyond the age of 18. The aim is to avoid, where applicable, abrupt interruption of access to education, healthcare, social and integration services in host communities.

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Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum seeker women and girls 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, and any form of gender-based violence and harmful practices, including child and forced marriage. This encompasses general and specific assistance (i.e. legal processes, support structures and services, support from NGOs and legal aid available to women and girls survivors of violence ~~CRV 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 and girls to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Commented [IBK6]: Recommend adding section on women's and girls' empowerment, environment that enables their agency and leadership role and influencing decision making processes which are affecting their lives and wellbeing.

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Access to justice including legal aid

11. Migrant women should have access to national and international complaint mechanisms and remedies to effectively exercise their rights and/or act upon violations of their rights, including access to legal aid.
12. Member States should ensure that migrant, refugee and asylum seeker 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.

Commented [IBK7]: Could free and accessible access to legal aid be added?

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.

Commented [IBK8]: This is bit weak. Is set as a standard? Or is ensured?

Artificial intelligence, automated decision-making, and data protection

18. Member States should ensure that a human rights impact assessment, with a gender equality (and vulnerability assessment) 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 and decision making platforms 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 and discrimination. Relevant authorities should therefore:

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- 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.

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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 refugee/ migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Commented [IBK10]: It is important also to mention the protection of women's organisations and women's rights activists who are increasingly being the target of violence and harassment.

Commented [IBK11]: Not only consulted but engaged in decision making processes, whenever applicable.

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.

Commented [IBK12]: To inform potential gender analysis of protection needs etc.

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, child and forced marriage, crimes committed in the name of so-called 'honour', forced abortion and sterilisation, female genital mutilation, sexual exploitation, economic, physical, and psychological violence.
28. A multi-agency approach, inclusive of refugee and 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 ~~survivors, 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 ~~survivors, 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 refugee, migrant and asylum seeker 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 ~~childearly~~ and forced marriage.
39. Measures should be taken to protect migrant women from hate speech, discrimination, 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 refugee, asylum seekers, and migrant women and girls. Member States should therefore adopt the following measures:
 - 41.1 take into consideration the situation and needs of refugee, asylum seekers, and migrant women in crisis management and recovery measures, including with respect to access to rights, and notably the right to health, shelter, food security, water, including measures to access to protection, economic empowerment, etc.

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

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

IV. Arrival

Pre-arrival information

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

Transit and reception facilities

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

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Asylum

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

Cross-border measures

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

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.

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

Social services, social security and housing

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

Integration, social, cultural and political participation

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

Commented [NK15]: Perhaps this can be re-phrased so the youth focus is not on "clubs" but rather express support to joint youth-sensitivity and inclusion of youth associations with the inclusion of context analysis, and the development of youth-responsive policies, strategies and programmes.

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.

Commented [NK16]: Ensure meaningful youth participation and inclusion in programs building up to first-time employment

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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

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gender-based violence, relationship breakdown, or other particularly difficult circumstances.

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

Family reunion

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

VI. Returns

87. While returns should always be in safety and dignity and preferably voluntary, involuntary returns must be in line with the principle of *non-refoulement*.
88. States should ensure that migrant, refugee and asylum seeking women and girl- (un)accompanied youth 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.