

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 sectors of the Council of Europe

List of sectors

1. Roma and Travellers Team division
2. Violence Against Women (GREVIO) division
3. Advisory Council on Youth (CCJ)- Youth Department
4. Office of the Commissioner for Human Rights
5. Convention on the Prevention of Torture (CPT) division

ROMA AND TRAVELLER TEAM Thorsten AFFLERBACH

4/2/2021

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Strasbourg, ~~29 January~~ 1 February 2021

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

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

Comments by the Roma and Travellers Team

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

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

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

9. **[Recalling the relevant measures contained in the UN Global Compact on Refugees (2018) and in the UN Global Compact for Safe, Orderly and Regular Migration (2018), aimed at promoting gender equality and empowering migrant, refugee and asylum-seeking women and girls, and at ending all forms of sexual and gender-based violence, trafficking in persons, exploitation and sexual abuse, and harmful practices ;]**
10. Having regard to the United Nations High Commissioner for Refugees "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", of 7 May 2002;
11. Taking account of the Council of Europe Gender Equality Strategy 2018-2023 and its strategic objective to protect the rights of migrant, refugee and asylum-seeking women and girls; including ethnic minority groups such as Roma and Travellers.
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 10⁷ ("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, becoming easy targets for trafficking and other forms of exploitation such as forced labour, 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. Acknowledging the issue of statelessness and subsequent lack of ID documentation faced by migrants and refugees, but also minority groups in Europe, such as Roma and Travellers, making it difficult to access services such as education and health care, making women even more vulnerable to all forms of exploitation and gender-based violence;
22. Recommends that the governments of member States:

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1. Take legislative or other measures to promote and apply the Guidelines included in the Appendix of this Recommendation, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
2. Ensure that this Recommendation, including its Appendix, is translated and disseminated (in accessible formats) among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Monitor progress in the implementation of this Recommendation and regularly inform the competent Council of Europe steering committee(s) and bodies of the measures undertaken and the progress achieved in this field.

Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

'Internally Displaced Persons': Persons who have been forced or obliged to leave their homes or places of habitual residence, in particular to avoid the effects of armed conflict, situations of generalized violence, or violations of human rights, and who have not crossed an internationally recognized state border (which is also an issue for minority groups in Council of Europe member States such as Roma and Travellers). They face the same issues such as migrants and refugees and similar gaps when it comes to protection.

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

2. Member States should ensure that all applicable measures are secured without discrimination on any ground, including those measures to protect the rights of migrant, refugee and asylum-seeking women and girls¹ victims of gender-based violence and trafficking in human beings.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the specific needs of women and girls with disabilities, girls, older women, pregnant and nursing women, women travelling alone or with children, lesbian, bisexual and transgender women, women of ethnic or of other minority background, such as Roma and Travellers, and survivors of gender-based violence, trafficking or torture.

¹ Hereunder regrouped under the terminology "migrant women".

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4. "Firewalls"² should be created between the legal status of undocumented women and their rights to access justice, protection, health and education.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling gender stereotypes and other forms of stereotypes, including those based on migrant status, culture, tradition and religion.
 - 5.2. implement awareness-raising and education measures to promote gender equality.

Girls

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

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant women and enable them to access their rights, they should be provided with relevant, accessible and culturally sensitive information and advice in a language that they understand, covering:
 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.

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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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.
 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).
 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.
2. Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

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

Detention

14. In the event that administrative detention is used - which should only be as a measure of last resort - separate safe zones should be provided for women and girls within detention facilities.
15. Age- and gender-sensitive healthcare and hygiene services in detention facilities, as well as appropriate activities during the time spent in detention, should be provided to migrant women in accordance with the Sphere standards, which are a set of principles and minimum humanitarian standards in four technical areas of humanitarian response: Water supply, sanitation and hygiene promotion (WASH), Food security and nutrition.
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:
1. border and immigration control decision-making, including as to entry or return;
 2. migration management, including the use of biometric information and the use of DNA testing for the purpose of family reunification;
 3. policing and security of migrant women, and services related to protection or prevention of crimes; and
- 19.4 the provision of services - including health, welfare, housing, employment, language training and education - to migrant women.
20. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
21. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:
1. ensure the confidentiality and security of such data;
 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 including ethnic minority organisations such as Roma and Travellers.

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, displaced and asylum-seeking women from all forms of violence against women. This encompasses domestic violence, sexual harassment, sexual violence including rape, trafficking, forced marriage, child 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:
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;
 2. be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to insecure migration status, lack of knowledge of legal rights and stigma and support them in this regard.
30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.

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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, lack of documentation and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive, ~~and~~ educational measures and protective measures such as shelter, legal, psychosocial and medical care for victims of sexual exploitation.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism including ethnic minority groups such as Roma and Travellers, who are similarly affected by hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

41. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member states should take into account the increased risk of violence, including domestic violence, poverty and homelessness for migrant women. Member States should therefore adopt the following measures:
 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;
 3. ensure the participation of migrant women and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

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

Transit and reception facilities

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

Asylum

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

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52. Women and (unaccompanied) girls should be able to access asylum and protection procedures at the borders and elsewhere.

53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:

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;
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;
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;
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:

1. the applicant's own personal circumstances; and to
2. relevant, gender-specific, country of origin information, notably access to justice, including both the legal framework and its implementation; available social, economic and other support; and any discrimination and/or patriarchal attitudes women are likely to encounter.

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

Cross-border

measures

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

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

60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

Commented [1]:

This needs to be very carefully assessed when it comes to unaccompanied minors as not to violate their specific rights.

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 on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.
63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

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

Education, vocational training and life-long learning

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

Employment

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

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

Residence permits

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

Family reunion

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

VI. Returns

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

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

Violence against Women Division (GREVIO) FRANCESCA MONTAGNA, 11/2/2021
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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
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1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its member States, inter alia, by promoting common standards and developing actions in the field of human rights;
3. Recalling that gender equality is central to the protection of human rights, the functioning of democracy and good governance, respect for the rule of law, and the promotion of sustainable development and of well-being for all;
4. Considering the profound changes in migration patterns and in the situation of migrant refugee and asylum-seeking women and girls, the fact that the number of displaced people has reached its highest ever in recent years and the significant developments in gender equality- and migration and asylum-related concepts, policies and legal instruments at all levels;
5. Wishing therefore to review and update its Recommendation No. R(79)10 to member states on women migrants, henceforth replaced by the present instrument;
6. [Noting with appreciation the efforts and activities undertaken by States to accommodate the needs of migrant, refugee and asylum-seeking women and girls;]
7. Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); the United

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

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

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

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

Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

Commented [NJ1]: The term mainly used in CoE documents is "irregular migrant women".

¹ Hereunder regrouped under the terminology "migrant women".

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

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

Girls

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

Information, empowerment, awareness raising and promotion of human rights

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

Commented [NJ2]: If country of residence is indeed meant than this would exclude all those who have an irregular residence status, i.e. no status. Maybe the term to use should be "victims in the country they reside in or host country".

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. Trauma support and counselling should be made available for victims of gender-based violence in detention facilities.
17. 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.
18. 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 [NJ3]: It would be important to also call for access to services such as trauma support and counselling. From the GREVIO monitoring it has emerged that asylum or migration detention of women who have experienced GBV, in particular sexual violence by police or similar, brings back trauma.

Artificial intelligence, automated decision-making, and data protection

19. 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.
20. 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.
21. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.
22. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:

- 21.1 ensure the confidentiality and security of such data;
- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

~~22,23.~~ Member States should actively support, including financially, and co-operate with migrant women, ~~and women's rights organisations and other civil society organisations that which~~ uphold the universal human rights of migrant and asylum seeking women, defend and empower them.

~~23,24.~~ 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, stalking, 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, victim-centred approach aimed at the empowerment of migrant women, inclusive of migrant women's organisations, should be adopted as regards matters relating to their protection from and support for experiences of violence.
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 gender-based violence;
 - 29.2 be aware of the difficulties that migrant women may face in disclosing events of gender-based violence, due to their insecure migration status, unavailability of quality interpretation services, lack of knowledge of their legal rights and of the relevance of their experiences of violence to migration/asylum decisions, unavailability of quality interpretation services, and stigma and lack of support to them in this regard.

Commented [NJ4]: The GREVIO monitoring has shown that most of the crucial civil society organisations supporting migrant women and more specifically asylum seeking women in the 20 countries where visits have been carried out so far are "mainstream" migrant and humanitarian NGOs, including general human rights organisations such as the Helsinki Committee, Care International, but also the faith-based religious humanitarian organisations like Caritas, or the Red Cross. It would be important to include them in this list because in many countries, in particular the small countries, we couldn't find many women's migrant organisations.

30. Professional interpreters trained in gender-based violence and trafficking in human beings should be available to assist migrant ~~women~~ and asylum seeking women seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedure.
31. Mechanisms should be in place in state- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, child-care institutions, schools and hospitals, to enable incidents of sexual and gender-based violence to be reported to and by staff or officers, including access to age- and gender-sensitive telephone helplines and procedures for referral to other appropriate agencies, and for medical and psychological treatment.
32. Member States should ensure access for migrant, refugee and asylum-seeking women to shelters for women victims of trafficking and gender-based violence, including domestic violence, regardless of their migration status.
33. General and specialist support services, that encompass legal counselling, short and long-term psychological support, trauma care, and health care, including immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault, and sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of gender-based violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant and asylum-seeking women should be conducted, taking specific account of their potential enhanced vulnerability owing to their 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 asylum seeking women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings, ~~as a consequence of the dissolution of their marriage with a sponsoring spouse/partner who has inflicted against them gender-based violence, and where they have been brought into another country against their will for the purpose of forced marriage.~~
39. Measures should be taken to protect migrant women from hate speech and sexism.

Commented [NJ5]: In para 30 and 35 it would be important to add a specific reference to asylum seeking women who would need legal aid and professional interpreters for the asylum determination procedure. The current wording of both paragraphs seems to focus on migrant women and criminal procedures only. This might be too limited a focus, as many migrant women will also have immigration law issues and family law issues to sort out before courts. It would be best to widen the scope of para 30.

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, sexual 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;

~~41.1.2~~ Take into consideration migrant women and asylum seeking women's heightened vulnerabilities and thus ensure, for migrant women and others, access to specialist support services for women victims of violence by qualifying them as essential services and guarantee their continuity;

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

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

IV. Arrival

Pre-arrival information

42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive, and include information on their rights and obligations in the host country, including their rights in relation to experience of gender-based violence.
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, female genital mutilation, forced marriage FGM, 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 and asylum-seeking women, procedures should be in place, including regular monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of gender-based violence.

Asylum

51. Member States should adopt and implement gender-sensitive asylum laws, practices and procedures.
52. Women should be able to access asylum and protection procedures at the borders and elsewhere.
53. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 Convention member States should:
 - 53.1 ensure that all forms of gender-based violence are recognised as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 53.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum ~~including the recognition of gender as a basis for the existence of a particular social group;~~
 - 53.3 provide comprehensive gender-specific guidelines for all stages of the asylum process including reception and support services, screening, determination of 'safe' countries, detention, status determination, adjudication and returns;
 - 53.4 ensure border police, migration officials, asylum officers, decision-makers and interpreters receive training in respect of the guidelines mentioned at [§53.3].
54. Women asylum officers should be available to women applicants ~~and applicants should have the possibility to express a preference for the sex of the interpreter.~~
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 [NJ6]: Asylum law experts have also pointed out that the specifically gendered experiences of persecution of women who are politically active in their home country is frequently overlooked. It would be important to not only call for a gender-sensitive interpretation of one of the five convention grounds but adopt a wider approach. For example, a woman who supports the political opposition by cooking food for the male opposition leaders or for people at rallies and who was raped by someone affiliated with the ruling party will not be considered as a woman being silenced by rape and hence will not be considered as a political refugee. There are many such cases where the gendered dimension goes unrecognised.

Cross-border measures

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

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

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

Social services, social security and housing

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

Integration, social, cultural and political participation

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

girls from negative social control. This could include participation in local, cultural, women's or other associations, sports clubs, youth clubs and others.

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

Education, vocational training and life-long learning

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

Employment

77. Member States should take specific and targeted measures to promote access to employment for migrant women, including those that are victims of gender-based violence, 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, or as victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances. Statutory agencies that are responsible in this area should be sufficiently trained on the rights of migrant women to benefit from the grant of an autonomous residence permit in such circumstances.

~~82-83.~~ The requisite evidential criteria and threshold for granting autonomous residence permits to migrant women should be realistic and sensitive to the situation of migrant women who are seeking to escape abuse and violence.

~~83-84.~~ Member States should ensure that migrant women 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/regain 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.

Commented [MF7]: Inadequate staff training and awareness of the rights of migrant women to benefit from the grant of an autonomous residence permit has emerged as a common feature across a number of GREVIO baseline evaluation reports.

Commented [MF8]: IN its baseline evaluation reports, GREVIO has repeatedly expressed concern regarding unattainable evidential criteria and standards of proof imposed by State Parties.

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

~~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

~~86-3-87.4.~~ ensure the adequate provision of information on the legal rights and obligations of women and girls arriving in their host country under family reunification regimes and ensuring their access to language and integration classes.

Commented [NJ9]: The dependencies and vulnerabilities of young women who join their spouses under family reunion schemes has been highlighted in GREVIO reports. GREVIO has been made aware on several occasions that the lack of information to women and girls who arrive, and their lack of the local language and culture, adds to their dependency on the spouse. If abusive, this situation results in non-disclosure of the abuse.

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*.

~~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 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.



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 [CCJ]: and young 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; [CC]: Recommendation CM/Rec(2019)4 on supporting young refugees in transition to adulthood] [as well as relevant resolutions and recommendations of the Parliamentary Assembly, of the Congress of Regional and Local Authorities and of the Conference of INGOs of the Council of Europe;]

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

Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

¹ Hereunder regrouped under the terminology "migrant women".

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

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

Girls

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

Information, empowerment, awareness raising and promotion of human rights

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

[CCJ: 9.4. 1 Provide resources and tools for the empowerment and support of refugee, asylum-seeking and migrant women, based on their special needs and unique characteristics in order that they may benefit to as great an extent possible from the social services and welfare available.]

- 10 Member States should facilitate the access of migrant women to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

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

Detention

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

Artificial intelligence, automated decision-making, and data protection

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

origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:

- 21.1 ensure the confidentiality and security of such data;
- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

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

Data collection, research and monitoring

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

III. Protection

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

31. [CC]: Easily accessible] 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 [CC]: with or without children] to shelters for women who are victims of violence, regardless of their migration status.
33. General and specialist support services, counselling, psychological support and health care, including sexual and reproductive health care and specific post-rape care, also for those accommodated in transit, reception and accommodation facilities, should be provided to victims of violence and trafficking in human beings in their countries of origin, in transit or in destination countries.
34. Risk assessment and risk management of violence against migrant women should be conducted, taking specific account of their potential enhanced vulnerability owing to insecure migration status and intersectional vulnerabilities.
35. Access to free legal advice and assistance, comprising legal aid, should be provided in order to support migrant women victims of violence through criminal and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
36. Member States should allow migrant women access to national compensation schemes, rehabilitation assistance, measures or other programmes aimed at social assistance and the integration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
37. Member States should develop specific measures to address the sexual exploitation of migrant women, in particular the demand for such exploitation, including punitive, preventive and educational measures.
38. Member States should ensure that migrant women do not suffer any penalty, including loss of migration status, as a consequence of their exploitation as victims of trafficking in human beings or of forced marriage.
39. Measures should be taken to protect migrant women from hate speech and sexism.
40. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women or girls.

State of emergency and crisis management

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

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

IV. Arrival

Pre-arrival information

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

Transit and reception facilities

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

Asylum

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

Cross-border measures

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

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

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

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

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

Social services, social security and housing

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

Integration, social, cultural and political participation

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

Education, vocational training and life-long learning

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

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

Employment

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

Residence permits

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

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

Family reunion

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

VI. Returns

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



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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*)**

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

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

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);

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

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

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

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Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

¹ Hereunder regrouped under the terminology "migrant women".

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

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Commented [C1]: We would suggest removing this element from the definition to keep it as open as possible and focused on the fact of migration rather than the underlying motives, which may be multiple/unclear and overlap with those of asylum seekers/refugees.

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

Girls

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

Information, empowerment, awareness raising and promotion of human rights

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

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.

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Detention

~~14.~~ 14. Detention should only ever be used as a last resort and states should seek alternatives to administrative detention. Children should never be detained for reasons related to their or their parents' migration status. In the event that administrative detention is used ~~which should only be as a measure of last resort~~ families should not be separated and separate safe zones should be provided for single women and girls within detention facilities.

Commented [C2]: We would suggest commencing this section on detention by acknowledging that the starting point should be the principle of non-detention. This principle should be particularly stressed as concerns girls under 18 with or without families and vulnerable persons. This could then be followed by emphasis on the need to implement and use *alternatives to detention* and setting out clear limits on the use of detention including the fact that it is a measure of last resort.

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~~15.~~ 14. 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.~~ 15. 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.

Commented [C3]: We would suggest mentioning that this principle of safe zones also applies to transit, reception and accommodation facilities. At the same time, we would suggest considering adding a reference to the need for specific family spaces. Since migrant women and girls may travel with fathers/husbands, one should ensure that the focus on 'safe spaces' is not translated in practices such as separation of families.

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~~17.~~ 16. The presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters, should be ensured promoted.

Commented [C4]: We would suggest saying: "should be ensured". See for example para 47 as well as para 54.

Artificial intelligence, automated decision-making, and data protection

~~18.~~ 17. 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.~~ 18. 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.~~ 19. Migrant women should be given the opportunity to participate in discussions around the development and deployment of new technologies affecting them.

~~21.~~ 20. Bearing in mind migrant women's particular vulnerabilities, the deliberate or inadvertent disclosure of their data within the host community or through transfer to the

country of origin could place them at risk of serious human rights abuses. Relevant authorities should therefore:

- 21.1 ensure the confidentiality and security of such data;
- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

~~22.21.~~ 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.

~~22.22.~~ Mechanisms should be established to ensure that migrant women's organisations are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

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

III. Protection

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

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Commented [CS]: We would suggest including ensuring the adequate availability of women interpreters as it is often necessary for a gender-sensitive asylum or immigration procedure.

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protection, whilst making initial complaints, throughout the justice process and in seeking reparations.

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

State of emergency and crisis management

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

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

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

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

IV. Arrival

Pre-arrival information

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

Transit and reception facilities

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

monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

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.

The possibility for women to lodge an independent asylum claim should be ensured and women should be made aware of this right.

52-53. 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].

53-54. Women asylum officers should be available to women applicants.

54-55. 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.

55-56. 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.

56-57. Member States should ensure that women have access to complementary/subsidiary protection, where necessary.

Cross-border measures

57-58. Member States should participate in resettlement and relocation programmes and implement legal pathways to ensure a safe transit for women and girls.

58-59. Specific assistance and humanitarian resettlement programmes should be funded for women victims of gender-based violence.

59-60. Member States should set up and implement effective cross-border protection mechanisms for victims of gender-based violence.

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Commented [C6]: Although covered perhaps implicitly by para 53 and sub-paragraphs, it could be useful to be more explicit on ensuring that women and girls can lodge an independent asylum claim from male family members if they wish to do so.

Commented [C7]: This point of ensuring access is also relevant for refugee status under the 1951 Convention. If this is not mentioned in the same manner as here for subsidiary protection, this formulation may risk giving the idea that subsidiary protection, rather than full refugee status in their own right, is the most logical protection solution. If the point is that they should have access to this, even if they themselves do not qualify for refugee status as such, we would suggest making this more explicit to avoid confusion.

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V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

- ~~60-61.~~ Authorities should ensure that healthcare provision is age and gender sensitive.
- ~~61-62.~~ Affordable, quality and gender-sensitive health services, encompassing mental, sexual and reproductive healthcare, including during pregnancy, as well as hygiene products, should be provided for migrant women on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.
- ~~62-63.~~ Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
- ~~63-64.~~ 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

- ~~64-65.~~ 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.
- ~~65-66.~~ 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

- ~~66-67.~~ Member States should ensure that any child born in their territory of a stateless woman is entitled to have their birth registered immediately after birth and to be granted citizenship or nationality.
- ~~67-68.~~ 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.
- ~~68-69.~~ Recognising that the ability to communicate in the host country's language is essential for integration in all aspects, Member States should ensure quality language training to migrant women and girls and therefore promote their empowerment and protection.
- ~~69-70.~~ 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.
- ~~70-71.~~ Public and private coaching, mentoring and other support programmes aimed at migrant women should be set up and supported, and positive role models promoted.
- ~~71-72.~~ The positive contribution made by migrant women to society should be highlighted and encouraged.

Commented [C8]: We would suggest adding this word to avoid childhood statelessness.

Commented [GC9]: in line with the UN Convention on the Rights of the Child, the 1961 UN Convention on the Reduction of Statelessness and the European Convention on Nationality

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Education, vocational training and life-long learning

~~72~~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.

~~73~~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.

~~74~~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.

~~75~~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

~~76~~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.

~~77~~78. Member States should consider removing barriers to work after a woman asylum-seeker has been present in the territory for a certain length of time.

~~78~~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.

~~79~~80. In respect of at least those migrant women who are permitted to work under the national law of member States, the latter should:

~~79.1~~80.1. _____ take measures to regulate and improve migrant women's working conditions and to eliminate all forms of exploitation and discrimination;

~~79.2~~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;

~~79.3~~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

~~79.4~~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

Member States should provide pathways to naturalisation as a key element to integration, and take measures to ensure that migrant women are not faced with gender-related obstacles in this regard.

~~80-81.~~ 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.

~~81-82.~~ Migrant women should be made aware of any entitlement to a renewable independent residence permit, for example due to their status as victim of human trafficking, victim of gender-based violence, relationship breakdown, or other particularly difficult circumstances.

~~82-83.~~ Member States should ensure that migrant women are granted a residence permit if their stay is necessary for criminal investigations or proceedings.

~~82-84.~~ 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.

~~84-85.~~ 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

~~85-86.~~ 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:

~~85-1-86.1.~~ adopt a wide definition of 'family', ~~consistent with the links and dependencies relied on by migrant women;~~

~~85-2-86.2.~~ ensure that women and girls are aware of their right to family reunion including as sponsors and receive access to legal advice and assistance to pursue that right; and

~~85-3-86.3.~~ 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

~~86-87.~~ While returns should always be in safety and dignity and preferably voluntary, ~~involuntary returns must be in line with the principle of non-refoulement.~~

~~87-88.~~ States should ensure that migrant, refugee and asylum seeking women ~~who are in need of protection~~, regardless of their status or residence, are not returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

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Commented [C10]: We would suggest adding here a reference to pathways to naturalisation as a key element to integration, and measures to ensure that migrant women are not faced with gender-based obstacles to this.

Commented [C11]: The drafters may wish to consider if there is a need to address age limits on family reunification here, which are applicable in many member states (e.g. 21 or even 24), which disproportionality affect women's possibilities for reunification.

A reference to the recognition of migrant girls as sponsors of family reunification and their related rights may also be useful here, since children in general, but girls in particular, may experience significant problems in acting as a sponsor and being able to apply for the reunification in a CoE member state of family members left behind in the country of origin.

See for more information on these two points the CommHR Issue Paper on family reunification.

Commented [C12]: We would suggest considering making a broader reference (beyond links and dependencies) to the diversity of relationships that should be recognised here. See the recommendation 3 from the CommHR Issue Paper on family reunification:

"- Accord family reunification rights to all spouses, where the term spouse is understood broadly to encompass not only legally recognised spouses and civil partners (including same-sex spouses and civil partners), but also individuals who are engaged to be married, who have entered a customary marriage (also known as "common-law" marriage) or who have established long-term partnerships (including same-sex partners)."

Commented [C13]: This part could perhaps be complemented by some mention of access by migrant women and girls to support in their reintegration upon return, especially in view of specific issues they may face in this respect.

Commented [C14]: Depending on the meaning that is given to "voluntary/involuntary returns", this formulation may give the impression that the principle of non-refoulement is not applicable when return is voluntary in the sense that the person is obliged to return but accepts to cooperate with the authorities. We would suggest reformulating this sentence to avoid any confusion.

Commented [C15]: We would suggest removing this part of the sentence as this should apply to any migrant, refugee and asylum seeking women not just those in need of protection, for instance if they are returned to a transit country where their life would be at risk.

~~88.89.~~ Recognising the particular difficulties that victims of gender-based violence face in fully disclosing the grounds for their international protection claim, member States should:

~~88.1.89.1.~~ ensure a gender-sensitive process that protects women against the risk of *refoulement*;

~~88.2.89.2.~~ 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*.

~~88.90.~~ Member States should ensure the suspension of expulsion measures of migrant women based on their dependant status on a spouse, partner or parent, in order to enable them to have the possibility to apply for an independent residence permit.

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Strasbourg, 29 January 2021

**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 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (...), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention, 2011);
8. Recalling the United Nations Convention Relating to the Status of Refugee (1951); the International Labour Organisation Convention 189 on Domestic Work (2011); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999); as well as CEDAW General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations (2013); CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); and CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017); CEDAW Recommendation No.38 on

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

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

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

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Draft Appendix

I. Definitions

For the purpose of this recommendation:

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

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

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

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

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

II. Horizontal issues

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

Non-discrimination, Intersectional issues, elimination of stereotypes

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

¹ Hereunder regrouped under the terminology "migrant women".

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

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Commented [GF1]: We have two minor observations on these definitions – perhaps we could have a call on this later on?

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

Girls

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

Information, empowerment, awareness raising and promotion of human rights

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

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Access to justice including legal aid

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

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Detention¹

14. Effective alternatives to detention should be provided for certain categories of vulnerable persons, these may include, *inter alia*, migrant women and girls who have been victims of torture, trafficking, pregnant women and nursing mothers, children, elderly or migrant women with disabilities. 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, where their privacy is guaranteed and which cater adequately for their gender-specific and child-specific specific needs.
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 [GF2]: The CPT Secretariat considers that the section of "detention" is, as currently drafted, slightly lacking many of the existing safeguards in this sphere, and it would be good to further develop this part later on in the context of the formal consultation of the CPT. At this stage, perhaps we may suggest that the whole section on "detention" (paragraphs 14 to 17) be removed and transformed into a new section "VI. Detention" before the section on "Returns"?

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Artificial intelligence, automated decision-making, and data protection

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

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

- 21.1 ensure the confidentiality and security of such data;
- 21.2 agree not to transfer any such data to the country of origin without the explicit consent of the affected person/s.

Co-operation with civil society

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

Data collection, research and monitoring

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

III. Protection

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

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

State of emergency and crisis management

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

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

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IV. Arrival

Pre-arrival information

- 42. Member States should ensure that immigration procedures, including those before arrival such as visa issuing procedures, are age- and gender-sensitive.
- 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. Essential infant nutrition, including drink, food and clothing, should be provided to migrant women with infants or migrant nursing mothers, where necessary.
- 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

Commented [GF3]: The CPT has in the past specified in its reports the provision of nappies/diapers, milk powder, food suitable for infants

monitoring visits by trained migration officials, to ensure compliance with the standards of protection for victims of violence.

Asylum

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

Cross-border measures

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

V. Residence and Integration

Access to healthcare services, including sexual and reproductive healthcare

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

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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 on the same basis as for nationals, regardless of their migration status. Such access should not be dependent on obtaining the authorisation of the migration authority or of a spouse, partner, parent or other relative, or guardian.
63. Migrant girls should be provided with access to age-appropriate sexual and reproductive health information and services.
64. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

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

Education, vocational training and life-long learning

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

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including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

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

Employment

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

Residence permits

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

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

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Family reunion

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

VI. Returns

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